SUPREME COURT OF THE UNITED STATES.

No. 104.

WILLIAM A. BRADLEY, APPELLANT,

vs.

PIERRE CHOTEAU, JR., CHARLES GRATIOT AND CLEMENT COX.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Pierre Chouteau, Charles Gratiot, and Clement Cox, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, now sitting, to answer the appeal of William A. Bradley, and to show cause, if any there be, why the decree rendered against the said William A. Bradley, in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable W. Cranch, chief judge of the circuit court of the District of Columbia, this 15th day of January, 1844.

Style of court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-seventh day of the same month, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

Present: William Cranch, chief judge; the honorable Buckner Thruston and James S. Morsell, assistant judges; Alexander Hunter, esquire, marshal; William Brent, clerk.

In the record of the proceedings of the said court, among others, are the following, to wit:

WILLIAM A. BRADLEY
vs.
PIERRE CHOTEAU, JR., CHARLES GRATIOT, and CLEMENT COX. } Parties.

Be it remembered, that heretofore, to wit, on the twenty-second day of May, in the year of our Lord one thousand eight hundred and forty, the said complainant, by Joseph H. Bradley, esq., his solicitor, filed in court here the following bill of complaint, to wit:

Bill of complaint.

To the honorable the judges of the circuit court of the District of Columbia, sitting in chancery for Washington county.

The bill of complaint of William A. Bradley, of the city of Washington, humbly sheweth, that your orator, on behalf of himself and others, in the year 1837, purchased of Pierre Choteau, jr., of the State of Missouri, and who he prays may be made a defendant to this bill, a large tract of land lying in the States of Missouri and Arkansas, for a large sum of money; that on the twenty-

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Appeal bond - - - - - - - - -	130	61
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You are hereby cited and admonished to be and appear at a Supreme Court of the United States, now sitting, to answer the appeal of William A. Bradley, and to show cause, if any there be, why the decree rendered against the said William A. Bradley, in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

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Present: William Cranch, chief judge; the honorable Buckner Thruston and James S. Morsell, assistant judges; Alexander Hunter, esquire, marshal; William Brent, clerk.

In the record of the proceedings of the said court, among others, are the following, to wit:

WILLIAM A. BRADLEY
vs.
PIERRE CHOTEAU, JR., CHARLES GRATIOT, and CLEMENT COX. } Parties.

Be it remembered, that heretofore, to wit, on the twenty-second day of May, in the year of our Lord one thousand eight hundred and forty, the said complainant, by Joseph H. Bradley, esq., his solicitor, filed in court here the following bill of complaint, to wit:

Bill of complaint.

To the honorable the judges of the circuit court of the District of Columbia, sitting in chancery for Washington county.

The bill of complaint of William A. Bradley, of the city of Washington, humbly sheweth, that your orator, on behalf of himself and others, in the year 1837, purchased of Pierre Choteau, jr., of the State of Missouri, and who he prays may be made a defendant to this bill, a large tract of land lying in the States of Missouri and Arkansas, for a large sum of money; that on the twenty-

third day of February, 1838, your orator, and a certain Charles M. Thruston, then acting for themselves and others, had a final settlement and liquidation of the purchase money for said tract of land, at the city of Washington, when your orator and the said Thruston, acting as aforesaid, passed to said Pierre Choteau, jr., as part of said purchase money, two promissory notes for the sum of five thousand dollars each, one drawn by Levi C. Turner, and the other by Henry L. Kinney, both in favor of and endorsed by Daniel Webster, and then past due and payable; that the said notes had been regularly protested, and the said endorser duly notified thereof.

Your orator further shows, that he and the said Thruston, on the said 23d day of February, 1838, entered into an agreement under seal, with the said Pierre Choteau, jr., in regard to the said two promissory notes, a true copy of which is herewith filed as part of this bill, marked complainant's Ex. A, by which, after reciting that the said Pierre Choteau, jr., had received the said two promissory notes from your orator and said Thruston, on certain terms therein mentioned, the said Pierre Choteau, jr., on his part, agreed to use all due, reasonable, and proper diligence to enforce the payment of the said two promissory notes within two years from the said 23d day of February, 1838, and to use and take all necessary legal measures and means to effect such payment; and your orator and said Thruston, on their part, jointly and severally agreed, if the said Pierre Choteau, jr., his executors, administrators, and assigns, should and did, well and truly, with all due diligence, by legal process, endeavor to enforce the payment of the said notes, and should not be able to effect such payment within two years from the date had aforesaid, and should then, or at any time thereafter, demand payment thereof, or of either of the said William A. Bradley and Charles M. Thruston, their or either of their executors or administrators, that then the said William A. Bradley and Charles M. Thruston, or one of them, or their executors or administrators, would, within thirty days after such demand, pay such note or notes, with the interest thereon, costs and legal charges.

And your orator further shows, that he being desirous to secure the execution of the said agreement on his part, and to fully satisfy the said Pierre Choteau, jr., agreed to execute to Charles Gratiot, who he prays may be made defendant to this bill, a deed of trust, conveying to the said Gratiot a large amount of valuable property in the city of Washington, upon trust, among other things, to secure the performance of your orator's part of said agreement. Your orator accordingly gave instructions to his counsel to prepare such a deed, and a deed was prepared and submitted to Clement Cox, esq., (who he prays may be made defendant to this bill,) then acting as counsel for said Choteau, who, objecting to some points of the said original draft, prepared another, which was executed by your orator on the 26th day of February, 1838, and a true copy of which is herewith filed, marked complainant's Ex. B; that al-

though the said agreement bears date the 23d day of February, 1838, yet it was not finally executed and delivered to said Choteau till the 26th day of February, when it was executed and delivered simultaneously with the said deed of trust, to the said defendants Choteau and Gratiot, and the said Pierre Choteau, jr., now has the said original agreement in his possession; that said deed of trust also provides for the payment of two promissory notes drawn by your orator, both dated 26th of February, 1838, for five thousand dollars, and bearing interest from date, one payable in one, and the other at two years after date; that your orator has paid one of the said notes, being the one which fell due on the 26th February, 1839; that the other note was transferred by said Choteau to one J. F. A. Sanford, and your orator hath agreed with said Sanford to extend the time of the payment thereof to the 26th day of July next, as will more fully appear by reference to the order of said Sanford, addressed to the cashier of the Patriotic Bank at Washington, a true copy whereof is herewith filed as part of this bill, marked complainant's Ex. No. 1.

Your orator further shows, that on the 27th day of February last past, he received from said Clement Cox, acting as attorney and counsel of and on behalf of said Pierre Choteau, jr., the communication in writing, which is herewith filed as part of this bill, marked complainant's Ex. C, and upon this communication, a demand was made upon your orator for the payment of the said two promissory notes. Your orator well knowing that the facts stated in said communication did not in any respect amount to a compliance by said Pierre Choteau, jr., with his part of said agreement, dated 23d February, 1838, and that said Choteau had entirely failed to use due or reasonable diligence to enforce the payment of the said notes within the two years, as provided in said agreement, refused to pay the said notes, or either of them, or to recognise any liability under the said agreement, on account of said two promissory notes. Your orator then, for the first time, was informed that said Choteau did not look for payment under said agreement, and pretended that said agreement had been modified and changed, and a new agreement had been made with your orator, which was contained in the recital and trusts of his said deed to Charles Gratiot, and that said Pierre Choteau, jr., was not thereby to use due diligence to collect and enforce the payment of the notes, but was to look only to the makers thereof respectively, and to use due diligence in regard to them, and failing in that, that your orator was to become liable for the payment of said notes; that the said Choteau had used due diligence, and unless your orator paid the said notes, the said trustee, Charles Gratiot, would proceed to execute the said trust.

Your orator shows and avers, that he did not examine the recital or the trusts set out in said deed at the time of its execution, because, he expressly declares, that it was designed to express the terms of said written agreement, dated 23d February, 1838, and he

understood at that time, and always since, and now understands, that it was intended to set out the same terms and conditions, and he offers himself ready to prove that such was the understanding and agreement of the parties to the said deed, and that it was not to contain any terms or conditions in reference to the two promissory notes aforesaid, different from the terms and conditions of the said written agreement; and he avers, if it shall appear to be otherwise, and to contain terms and conditions different from them mentioned in said written agreement, such difference is entirely an accident and mistake, and not according to the intent of the parties, and arose from some misapprehension on the part of the counsel employed to prepare the said deed; and the whole of said deed is to be taken in connexion with, and to be explained and controlled by, said written agreement, which contains the deliberate conclusion of the parties, and has never been modified or changed to this day.

And your orator further shows, that said Pierre Choteau, jr., at the time he received the two promissory notes aforesaid from your orator and said Thruston, and on the said 26th day of February, 1838, well knew that Henry L. Kinney, the maker of one of said notes, a citizen of the State of Illinois, reputed to be wealthy, and in possession of large landed estates. And your orator avers, that if due diligence had been used to recover the payment of said note from said Kinney, it might have been enforced by legal process; and that said Kinney, long after said twenty-sixth of February, was within the reach of civil process in this country, and might have been arrested if said Choteau had used reasonable diligence to procure his arrest, and was well able to pay said debt.

Your orator further shows, that Daniel Webster, the endorser of both of said notes, was then, and is now, a Senator of the United States, residing in Boston, and State of Massachusetts, as was well known to said Choteau, and might have been sued, and was and is abundantly able to pay the said debts: yet the said Pierre Choteau, jr., hath not at any time used due or reasonable endeavors to enforce the payment of said promissory note from said Henry L. Kinney, or of either of them from said Daniel Webster, but hath hitherto wholly refused and neglected to proceed against either of them. Nor doth he admit, but requires proof of the facts, that he hath used due or reasonable diligence to enforce the payment of said note, so as aforesaid made by Levi C. Turner.

Your orator further shews that he hath been notified by said Clement Cox, acting for and on behalf, and as the attorney of said Pierre Choteau, jr., and of said Charles Gratiot, that the said Gratiot is about to advertise and sell the property of your orator conveyed in and by said deed of trust, and that he now has the advertisement prepared for publication by said Gratiot, and will insert the same in the public newspapers of the city of Washington; that said Pierre Choteau, jr., and Charles Gratiot are citizens resident in the State of Missouri, and beyond the common law jurisdiction of

your honorable court; that the said agreement and deed of trust, in reference to the two promissory notes, have performed their office, and so far as they relate to the said two promissory notes, are no longer valid or subsisting contracts between your orator and said Choteau, and ought to be brought into this court to be cancelled by order of this court. That the said Choteau, jr., and Gratiot will do to your orator grievous injury, if the said advertisement shall be inserted in any public newspaper, and they are about to do so; and that, if the property shall be thus sold, it will cause irreparable injury to your orator; and that it is against good conscience in the said defendants to require such sale, when the said Choteau has thus failed to do his duty in endeavoring to collect the money upon the said notes of Kinney and Turner. All which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator; yet your orator is remediless in the premises, at and by the ordinary rules of proceeding at common law, and can only have adequate relief in this court, where matters of this and the like sort are properly cognizable and relievable.

To the end, therefore, that the said Pierre Choteau, jr., Charles Gratiot, and Clement Cox, may each, upon their several and respective corporal oaths, full, true, and perfect answers make as to their knowledge, recollection, information, and belief, of and concerning the matters herein before particularly set out and stated, and that as fully and particularly as if the same were herein again repeated, and they interrogated thereto; and that the said Pierre Choteau, jr., may bring into court the said agreement, dated on the 23d day of February, 1838, and made between your orator and Charles M. Thruston, of the one part, and Pierre Choteau, jr., of the other part; and that said Charles Gratiot bring into this court the said deed of trust executed by your orator to said Gratiot on said 26 day of February, 1838. And that the said Pierre Choteau, jr., Charles Gratiot, and Clement Cox, their, and every of their agents and attornies, be enjoined by this court from proceeding to advertise or sell the property mentioned in said deed, until the further order of this court in the premises, and for such other and further relief as to your honors may seem meet in the premises. May it please your honors to grant to your orator the United States writ of subpœna, and of injunction, prohibiting the said Pierre Choteau, Charles Gratiot, and Clement Cox, their, and every of their agents and attornies as aforesaid; and your orator, as in duty bound, will ever pray, &c.

JOS. H. BRADLEY,
Sol'r for compl't.

DISTRICT OF COLUMBIA, *Washington county, sc:*

William A. Bradley, the complainant in the foregoing bill in chancery, makes oath according to law, before me, the subscriber, a justice of the peace in and for said county, this 29th day of April,

1840, that the facts stated in the foregoing bill, as of his own knowledge, are true, and he believes those to be true which are stated on the information of others.

HY. NAYLOR, *J. P.*

DISTRICT OF COLUMBIA,
County of Washington, to wit:

On the 20th day of May, 1840, the within bill having been amended, the complainant, Wm. A. Bradley, personally appeared before me, the subscriber, chief judge of the circuit court of the District of Columbia, and made oath, in due form of law, that the matters stated in the within and foregoing bill, as of his own knowledge, are true, and that the matters therein stated, as of the knowledge of any other person, he believes to be true.

W. CRANCH.

Exhibit A, referred to in the foregoing bill of complaint, (page 7.)

Exhibit A.

W. A. BRADLEY,
C. M. THRUSTON, and } Agreement.
P. CHOTEAU, Jr.

Whereas Pierre Chouteau, jr., of the city of St. Louis, and State of Missouri, hath received of the undersigned, W. A. Bradley and C. M. Thruston, two promissory notes, for the sum of five thousand dollars each, one drawn by Levi C. Turner, and the other by Henry L. Kinney; both of which were due and payable on or about the first day of October last past, and hath given a receipt therefor as so much cash, and hath also agreed to use all reasonable, due, and proper diligence to collect the payment of the same by legal process, as well as other proper means; and it was understood and agreed that the undersigned, W. A. Bradley and C. M. Thruston, should be responsible for the payment of said note within two years from the date, if the said P. Choteau, jr., should not succeed in enforcing the payment thereof as aforesaid within the said two years.

Now, this article of agreement, made this 23d day of Feb'y, 1838, by and between the said William A. Bradley, of the city of Washington, D. C., and C. M. Thruston, of Cumberland, Md., of the one part, and the said P. Choteau, jr., of the other part, witnesseth: That the said P. Choteau, jr., agrees, on his part, to use all due, reasonable, and proper diligence to enforce the payment of the said two promissory notes within two years from this date, and to use and take all necessary legal measures and means to effect such payment; and the said William A. Bradley and C. M. Thruston hereby, jointly and severally, bind themselves, and each of them, their, and each of their heirs, executors, and administrators, and assigns, as follows: if the said P. Choteau, jr., his executors, administrators, and assigns, shall and do, well and truly, with all due diligence, by legal process, endeavor to enforce the payment

of the said notes, and shall not be able to effect such payment within two years from this date, and shall then, or any time thereafter, demand payment thereof, or of either the said W. A. Bradley and Ch. M. Thruston, their, or either [of their] executors or administrators, that then the said W. A. Bradley and C. M. Thruston, or one of them, their, or some of their executors or administrators shall, and within thirty days of such demand, pay such note or notes, with the interest thereon, costs, and legal charges.

In testimony whereof, the said parties have hereunto set their hands and seals, this 23d day of February, 1838.

(Signed,) W. A. BRADLEY, [SEAL.]
C. M. THRUSTON. [SEAL.]

Signed, sealed, and delivered in presence of—
C. GRATIOT.

Exhibit B, referred to in the foregoing bill of complaint, (page 8.)

WM. A. BRADLEY, to CHARLES GRATIOT. } Deed of trust, recorded 26th Feb'y, 1838.

This indenture, made this twenty-sixth day of February, in the year of our Lord one thousand eight hundred and thirty-eight, between William A. Bradley, of the city of Washington, in the District of Columbia, of the first part, Pierre Choteau, junior, of the city [of] St. Louis, in the State of Missouri, of the second part, and Charles Gratiot, of said city of Washington, of the third part, witnesseth: Whereas the said William A. Bradley stands justly indebted unto the said Pierre Choteau, jr., in the sum of ten thousand dollars, on his two promissory notes in favor of said Pierre Choteau, jr., each for the sum of five thousand dollars, bearing even date herewith, and being respectively payable at one and two years, with interest from date, and is desirous hereby to secure the full and punctual payment at maturity of said notes respectively, and all interest, cost, and charges, properly to accrue thereon.

And whereas, also, the said Wm. A. Bradley, for valuable and sufficient considerations hath joined in assigning, and hath agreed to guaranty and secure the ultimate payment unto said Pierre Choteau, jr., of two other promissory notes, each for the sum of five thousand dollars, dated the twenty-fourth day of March last past, and payable on the fourth day of October last past, the one being drawn by Levi C. Turner, and the other by Henry L. Kinney; which two last notes said Pierre Choteau, jr., hath agreed to use due diligence and the proper legal measures to collect from said Turner and Kinney respectively; and if the amounts cannot be collected from them by the use of such diligence and measures in the space of two years from the date hereof, the said William A. Bradley agrees, at the end of said space of two years, to take up the said notes and pay the amounts thereof, together with all legal fees and costs expended in suing the said Turner and Kinney, or their representatives,

unto the said Pierre Choteau, jr., his executors, administrators, or assigns.

Now, therefore, this indenture witnesseth, that the said William A. Bradley, for and in consideration of the premises, and of the sum of five dollars to him in hand paid, by said Charles Gratiot, before ensealing and delivery of these presents, receipt of which sum of five dollars is hereby acknowledged, and by request of said Pierre Choteau, jr., hath granted, bargained, sold, enfeoffed and conveyed, and doth by these presents grant, bargain, sell, enfeoff and convey unto the said Charles Gratiot, his heirs and assigns forever, one undivided moiety or half part of all that square number three hundred and fifty-six (356) of said city of Washington, with the buildings, mills, wharves, rights, privileges, and appurtenances to the same belonging or appertaining. Also twenty-three hundred and fifteen parts (the whole being divided into three hundred and fifteen equal parts,) of all that property in the said city of Washington known as the National Hotel, comprising several lots and parts of lots of ground in square number four hundred and ninety-one (491) with the buildings and improvements thereon, being with nine other three hundred and fifteen parts heretofore sold and conveyed of record by said William A. Bradley, all those premises granted and conveyed to said William A. Bradley, his heirs and assigns, or expressed and intended so to be, in and by a certain indenture between Richard Smith of the first part, George Calvert of the second part, Roger C. Weightman of the third part, William A. Bradley of the fourth part, and others of the fifth and sixth parts, bearing date the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and thirty-one, and recorded in liber W. B. No. folios, &c. of the land records of the county of Washington in the District of Columbia, together with the improvements and appurtenances to the same belonging or appertaining: To have and to hold all and singular the premises unto and for the only use and behoof of the said Charles Gratiot, his heirs and assigns forever. In trust, nevertheless, for the objects and purposes following, and none other, that is to say: if said William A. Bradley shall well, truly and punctually at maturity, pay, or cause to be paid, to the said Pierre Choteau, jr., his executors, administrators or assigns, the aforesaid two promissory notes drawn by said William A. Bradley; and if said Levi C. Turner and Henry L. Kinney shall, within the space of two years next after the date hereof, pay their two promissory notes aforesaid, with all interest and legal fees and costs accrued and to accrue thereon, unto the said Pierre Choteau, jr., his executors, administrators or assigns, or he and they failing, with the use of due diligence and proper legal measures, to enforce and effect the collection and payment of the said last two promissory notes within the space of two years from and next after the date hereof, from the said Turner and Kinney respectively, the said William A. Bradley, his executors or administrators, within

thirty days after notice of such failure and demand on him or them, shall well, truly, and fully pay and satisfy unto the said Pierre Choteau, jr., his executors, administrators or assigns, whatever sums of money shall remain owing and unpaid on the said two last notes for principal, interest, or legal fees or costs, and shall make no default therein; then upon such full, due and punctual payment of every of the aforesaid four notes, with interest, fees and costs as aforesaid, being made and completed, the said Charles Gratiot, or his heirs, shall release and reconvey the said premises unto the said William A. Bradley, his heirs and assigns forever, and before such true, full and punctual payment of every of said notes, with interest, fees and costs as aforesaid, shall be made and completed as aforesaid, and until some default made as to some part thereof, shall hold the said premises in trust for the said William A. Bradley, his heirs and assigns, and permit him and them to have the possession, use and enjoyment thereof; but if there shall be any default whatever in the true, full and punctual payment at maturity of said two first mentioned notes, drawn by said William A. Bradley, or if on the failure of the said Pierre Choteau, jr., his executors, administrators and assigns, after the use of due diligence and the proper legal measures, to enforce and effect the collection from said Turner and Kinney respectively, or their respective representatives, of the other two notes aforesaid, (drawn by said Turner and Kinney respectively) in the aforesaid space of two years next after the date hereof, with all legal fees and costs as aforesaid, there shall be any default on the part of said William A. Bradley, his executors or administrators, within thirty days after notice given of such failure and demand made of him or them to make full and punctual payment to the said Pierre Choteau, jr., his executors, administrators or assigns, of whatever shall remain unpaid and owing in either of said last notes, whether for principal, interest, fees or costs as aforesaid; then on any and every such default, as to any part of any of the said notes, interest, fees or costs, it shall and may be lawful for the said Charles Gratiot, or his heirs, and he and they are hereby required, on the demand of the said Pierre Choteau, jr., his executors, administrators or assigns, to make sale at public auction of all (or so much as he or they making the sale shall deem sufficient to satisfy the objects of this trust, and such parts as he and they shall consider most convenient to be sold) of the hereinbefore described premises; and the manner of proceeding therein shall be as follows: before any sale shall be made, there shall be thirty days notice of the time, place and terms thereof, (all of which are hereby submitted to the sound discretion of the party or parties making the sale) given by advertisement in some newspaper published in the city of Washington, and the sale shall be to the highest bidder, and shall be made in such parcels, at such time and times, and with such adjournment, as to said party or parties making the sale shall appear reasonable: and on

the full payment of the purchase money, and compliance with the terms of sale, the said Charles Gratiot, or his heirs, shall execute to each purchaser, his or her heirs and assigns, a valid deed of conveyance in fee simple of the premises sold, which shall thereupon be held free from charge or liability for the due application of the purchase money; and the proceeds of any and every such sale shall apply in the first place to defray all the necessary or proper expenses of executing this trust, including a commission not exceeding three per cent. for the services of the trustee, then to the payment of whatever sums shall then be due and payable by said William A. Bradley, his executors or administrators, on account of any of the aforesaid notes, shall then reserve a sufficient sum to pay and satisfy all further sums, then yet undue, for which the said William A. Bradley shall be in any manner liable, whether for principal, interest or costs, on account of any of said notes: and any balance thereafter remaining shall pay over to said *William A.* William A. Bradley, his executors, administrators or assigns; and should any sums be reserved hereunder to cover the aforesaid guaranty, by said William A. Bradley, of the notes of Levi C. Turner and Henry L. Kinney, to which said Pierre Choteau, jr., his executors or administrators, shall afterwards forfeit, either by the collection of a corresponding sum of said notes within the aforesaid space of two years, or by a failure to use due diligence and proper legal measures therein as aforesaid, thereupon on said forfeiture happening and being proved, pay over such reserve moneys to the said William A. Bradley, his executors, administrators or assigns. And the said William A. Bradley, for himself, his heirs, executors and administrators, covenants and agrees with the said Charles Gratiot, his heirs and assigns forever, to warrant and forever defend the said premises unto him and them, against all persons and claims whomsoever and whatsoever, and to make all such other deeds, conveyances and assurances in the law as shall be necessary and proper for assuring, securing, quieting and effectually conveying the premises hereinbefore conveyed, or intended so to be, unto him and them, the said Charles Gratiot, his heirs and assigns, according to the true intent and object of these presents, and the parties hereto.

In testimony whereof, the said William A. Bradley hath hereunto set his hand and seal on the day and year first hereinbefore written.

W. A. BRADLEY, [SEAL.]

Signed, sealed and delivered in the presence of us,

B. K. MORSELL.

CLEMENT T. COOTE.

DISTRICT OF COLUMBIA.

County of Washington, sct.

On this twenty-sixth day of February, in the year of our Lord,

one thousand eight hundred and thirty-eight, before the subscribers, two justices of the peace in and for the said county of Washington, personally appear[ed] William A. Bradley, party to the aforegoing indenture, and Mrs. Sidney Ann Bradley his wife, and acknowledged the said indenture to be their act and deed. And the said Mrs. Sidney Ann Bradley, being thereupon by us privately examined, apart from, and out of the hearing of her husband, whether she doth make her said acknowledgment of the same willingly and freely, and without being induced thereto by fear or threats of, or ill usage by her husband, or fear of his displeasure, acknowledges and declares that she doth.

Acknowledged before, and certified by

B. K. MORSELL, J. P.
CLEMENT T. COOTE, J. Peace.

True copy from liber W. B. No. 68, fol. 112, &c.

Test: WM. BRENT, *Clk.*

Exhibit No. 1, referred to in the foregoing bill of complaint, (page 9.)

WASHINGTON, 26 Feb., 1840.

P. THOMPSON, esqr., cashier.

Sir: Mr. W. A. Bradley, has this day given me a note of five thousand dollars, payable to my order, five months after date, with interest, at the Merchant's Bank of New York. Upon his exhibiting to you satisfactory evidence of the payment of said note, you will deliver to him his note of five thousand dollars, dated 26th Feb'y, 1838, payable two years after date with interest; the interest having been this day paid to me.

Yr. ob. servt.

J. F. A. SANDFORD,

Said note to lie over without protest. J. F. A. S.

Exhibit C.

Exhibit C, referred to in the foregoing bill of complaint, (page 9.)

Messrs. Bradley and Thruston assigned to Mr. P. Choteau, jr. on the 23d of Feb'y, 1838, two promissory notes of Levi C. Turner and Henry L. Kinney, respectively, each for $5,000, and then being over due. These notes were made at New York, and payable there. Mr. Choteau immediately sent the notes to his agent at N. York which was considered the best point for their collection. Turner was promptly sued there, judgment was had against him, and execution followed without any fruits. The other note was held for some time at New York, in expectancy of Kinney being there; at the end of this period, the agent heard that K. was at Washington, and immediately came on to this place, but found that K. had started for the west, and within reach of Mr. Choteau; he then forwarded the note to Mr. Choteau, who hunted for K. throughout the west; hearing of him at *time*, but never able to overtake him, and

finally, he has understood that K. has gone to Texas, and is not worth pursuing, being entirely insolvent. The above I understand to be the facts, as to the diligence used by Mr. Choteau.

CLEMENT COX.

Feb'y 27, 1840.

It appears that the above mentioned notes were assigned to Mr. Choteau, some time before Feb'y 23, 1838, and before their maturity. But on that day, an arrangement was made with Messrs. B. & T. under which he became bound to take certain steps for their collection.

CLEMENT COX.

Feb'y 27, 1840.

Mr. Cox ought further to have stated that, at the time of the agreement, Mr. Choteau well understood and knew that Kinney resided in the State of Illinois, and had large property there. Under the terms of agreement and this state of facts, I have no doubt that Messrs. Bradley and Thruston are not liable for Kinney's note. I am also inclined to think, and as at present advised must say, that by the terms of the agreement Mr. Choteau was bound to proceed against Mr. Webster also, as endorser, and to use reasonable and proper diligence to enforce the payment of the notes from him. This has not been done, and on this ground their liability under the agreement has been released.

JOS. H. BRADLEY.

29*th Feb.*, '40.

Upon the back of the foregoing bill of complaint, was the following order, to wit:

Order for injunction.

Upon filing this bill and the exhibits therein referred to, and the complainant's bond to the defendant Choteau, with surety, to be approved by the court, or one of its judges, in the penalty of $2,000, with the usual condition; let the injunction issue, to restrain the defendants and their agents, and either of them, and the agents of either of them, from selling, and from advertising for sale, the property in said deed of trust mentioned, until the further order of the court.

W. CRANCH.

May 20, 1840.

Thereupon the said complainants filed in court here the following bond, to wit:

Injunction bond.

Know all men by these presents, that we, William A. Bradley and John Y. Catlett, both of the city of Washington, and District of Columbia, are held and firmly bound unto Pierre Choteau, jr., of the State of Missouri, in the full and just sum of two thousand dollars current money, to be paid to the said Pierre Choteau, jr., his executors, administrators, or assigns; to the true payment whereof

we bind ourselves, and every of us, our, and every of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-first day of May, anno domini 1840.

Whereas, the above bound Wm. A. Bradley hath obtained an injunction from the circuit court of the District of Columbia, sitting in chancery for Washington county, to prevent the said Pierre Choteau, jr., Charles Gratiot, and Clement Cox, their, and every of their agent and attornies, from proceeding to advertise, or sell, the property mentioned in a deed of trust from said William A. Bradley to said Charles Gratiot, dated the 26th day of February, 1838, until the further order of the said court in the premises.

Now, the condition of this obligation is such, that if the said William A. Bradley shall prosecute the said writ of injunction with effect, and satisfy and pay all costs, damages and charges, that shall accrue in the chancery court, or be occasioned by the said injunction, unless the court of chancery shall decree to the contrary, and shall in all things obey such order and decree as the said court shall make in the premises, then the above obligation to be of none effect, else to be in full force and virtue.

W. A. BRADLEY, [SEAL.]
JNO. Y. CATLETT. [SEAL.]

Signed, sealed, and delivered, in the presence of—
A. COYLE.

Approved: W. CRANCH.

Whereupon subpœna and injunction issued as prayed, returnable the fourth Monday of November next.

Thereupon the said cause was regularly continued at rules until the first Monday in August, eighteen hundred and forty, when the said defendants, by Clement Cox, esquire, their solicitor, filed the following answers, to wit:

Answer of P. Choteau.

WILLIAM A. BRADLEY,
vs.
PIERRE CHOTEAU, junior, CHARLES GRATIOT, and CLEMENT COX.

In the circuit court of the District of Columbia, for Washington county.

The separate answer of Pierre Choteau, junior, to the bill of complaint of William A. Bradley, the above named complainant:

This respondent, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the manifold errors, uncertainties, and insufficiencies in the said bill contained, for answer thereto, or to so much thereof as this respondent is advised is material for him to answer unto, saith: that the said complainant and others, in the year eighteen hundred and thirty-seven, purchased of Pierre Choteau, senr., and Marie P. Le-

duc, the large tract of land alluded to in the bill of complaint, but this respondent never had any interest in said land, nor had he any concern in negotiating the sale of said land to the complainant and his copurchasers. This respondent further says, that upon the said purchase being made, the purchasers passed to the said Pierre Choteau, senr., and the said Leduc, the said notes of Levi C. Turner and of H. L. Kinney, and also a note of Daniel Webster, and a note or draft of Lloyd N. Rogers, and a note or draft of James Monroe. This respondent says that, to secure the purchase money for the said land, a mortgage was executed to said Pierre Choteau, sr., and said Leduc, upon the land so purchased from them, but whether it embraced the amount of the notes so passed to them by the purchasers, or secured only the balance of the purchase money over and above the amount of said notes, this respondent is unable to state, as the mortgage was surrendered to the said complainant.

This respondent says, that upon the said sale being made, a deed was executed by the said Pierre Choteau, senr., and the said Leduc, to the purchasers for the said tract of land, and the said complainant, as this respondent has been informed and believes, proceeded to sell portions of the said land, but found that the said mortgage so incumbered the title to said land that it could not be disposed of to advantage, and that some of his vendees refused to make payment because of said incumbrance. The said complainant then became anxious to change the security so as to release said land from the mortgage, and applied for that purpose to said Pierre Choteau, senr., offering to substitute other security. This respondent being in New York in the month of February, in the year 1838, went at the request of the complainant to Washington city, for the purpose of making some arrangement of the security with the complainant which might satisfy the complainant's wishes, and in the negotiation which was conducted there, and in the subsequent change of the security, this respondent acted altogether on behalf of the said Pierre Choteau, senr., and the said Leduc, having no interest whatever in the securities which had before been given, or in the change of the securities; and this respondent avers, that the change of security proposed by complainant, and acceded to by respondent, was made solely for the accommodation of the complainant. This respondent further answers and says, that the said two notes mentioned in complainant's bill, one on Levi C. Turner, the other on H. L. Kinney, had been regularly protested when the same became due, and were both payable in New York; but this respondent expressly denies the statement in complainant's bill, that he passed those notes to this respondent in payment for the said tract of land, and this respondent believes that he never had seen the said notes before the change in the security was made at the request of the complainant.

This respondent further answers and says, that upon the change of security being agreed upon he received from the complainant

stock in the Life and Trust company in Baltimore to the amount of fifteen thousand dollars, and notes of the complainant to the sum of ten thousand dollars, which are his two notes mentioned in the said deed of trust to Charles Gratiot, and the deed of trust in the bill of complaint mentioned was executed to secure his individual notes and the notes of Turner and Kinney. The security for the whole consideration money when the change was made consisted of the notes of Monroe, Turner, Kinney, Webster, and Rogers before mentioned, and the two notes of the complainant mentioned in the bill, with the deed of trust made by complainant, and the stock of the Life and Trust company, which was taken in payment; the whole consideration of the sale of the land being fifty-four thousand dollars. This respondent further says that, for securing the ultimate payment of the individual notes of the complainant, and the notes of said Turner and Kinney, he looked to the deed of trust to be given upon the property of the complainant; and he further says, that the contract or agreement executed by the complainant and Charles M. Thruston, a copy of which is exhibited with complainant's bill, was not considered by this respondent as the contract to be guarranteed by the deed of trust, but was, as this respondent then understood it, designed by the complainant to bind said Thruston jointly with himself, so that said Thruston's obligation might be complete; and this respondent says that he then regarded, and still regards, the said agreement as having no connexion with the deed of trust. This respondent, in order that the view of said agreement or contract entertained by him when it was made may be more apparent, states, that he surrendered to the complainant the mortgage (which had been executed upon the land sold to complainant and others) before the said agreement exhibited with complainant's bill had been executed by said Thruston; and he further says that the said Thruston was not in Washington city while the negotiation for the change of security was in progress, and that he called upon said Thruston *a* Cumberland, in the State of Maryland, when he was on his return to Missouri, and presented the said agreement to him, said Thruston, for his signature, which was given there. And this respondent further says, that the said agreement has never been executed by this respondent to this day. This respondent says that the said agreement or contract, a copy of which is exhibited by said complainant, was not intended or understood to control the terms of the said deed of trust, and especially it was not understood by this respondent to impose upon him any further duties or obligations in respect to the two notes of Turner and of Kinney, than are recognised in the deed of trust; and if its general terms admit of a construction by which this respondent would be bound to do more than is contained in the deed of trust, then the mistake is in the said agreement; for this respondent expressly states that the deed of trust was the principal security, and was that to which he looked for the ultimate payment of the money securred by it. This respon-

dent further answers and says, that the complainant did carefully examine the terms of the said deed of trust, and must have fully understood them, before he executed the instrument. This respondent further answers, that immediately upon his return to Missouri he proceeded to make the necessary enquiries about the said H. L. Kinney, and where he was to be found; and upon such enquiry learned that he had gone to some of the eastern cities; this respondent had brought the note of the said Kinney out to Missouri when he came, and upon *learing* that the said Kinney had gone to the east, he despatched it on the sixteenth day of April, 1838, to Ramsay Crooks of New York, who acted as the agent of this respondent, in order to have the said Kinney arrested there.

This respondent has been informed and believes, that the said Crooks, upon enquiring for the said Kinney, ascertained that he was at Washington city, and immediately went to that place in order to have said Kinney arrested, or in some other manner to compel him to pay the said note, but upon arriving at Washington he learned that said Kinney had left that place, and could trace him no farther, but still kept the said note, with the expectation that he would come to New York, where he could arrest him. This respondent afterwards learned that said Kinney returned to Illinois sometime in the summer of the year 1838, and in the fall of that year suddenly departed for Texas, whence he has never returned. This respondent says that the said Kinney was an unmarried man, and his residence was about two hundred and fifty miles from the residence of this respondent, and so this respondent says he could not be immediately advised of the movements of said Kinney. This respondent says that he was anxious to commence legal proceedings against said Kinney from the time he got possession of the said note, and endeavored to find him where he might be sued, but without success. This respondent says that the said Kinney, when he left Illinois, was altogether insolvent, and no legal proceeding could have been instituted which would have been effectual. This respondent says that suit was instituted against said Turner upon his note, and judgment and execution obtained without delay, but nothing could be made by execution. This respondent says that it is true that the trustee Charles Gratiot has been required by this respondent to proceed to sell the said complainant's property, conveyed in the said deed of trust, to satisfy the said amount of said notes of Kinney and Turner, and that this respondent claims the amount of said notes from the complainant, as due to this respondent from the expiration of thirty days after the notice given by Clement Cox, esqr., which notice is stated in said complainant's bill; and this respondent now insists that the said complainant ought in equity and good conscience to pay to this respondent the amount of the said two promissory notes of said Kinney and Turner. This respondent says that he cannot set forth the date of the institution of suit against said Turner, nor the precise progress of the suit, as he has no trans-

cript of the record before him, but he states the fact to be, that he used all reasonable diligence in instituting and prosecuting the suit, but without effect.

This respondent denies all fraud, combination, &c., and having fully answered the complainant's bill, without that, *that*, &c., prays to be hence dismissed with his reasonable costs, &c.

PR. CHOUTEAU, Jr.
C. COX, *Solicitor.*

STATE OF MISSOURI,
County of St. Louis.

This eighth day of August, 1840, before the subscriber, a justice of the peace in and for said county, personally appears Pierre Chouteau, junior, the above respondent, and makes oath on the Holy Evangelists of Almighty God, that the foregoing answer, so far as stated of his own knowledge, is true, and he believes it to be so in all other particulars.

PR. CHOUTEAU, Jr.

Sworn to and subscribed before me, the date above written.

LOUIS T. LABEAUME,
Justice of the Peace, St. Louis county.

STATE OF MISSOURI, } *Ss.*
County of St. Louis. }

I, Henry Chouteau, clerk of the county court, within and for the county of Saint Louis, in the State of Missouri, which is a court of record, having a seal, do certify that Louis T. Labeaume, esquire, whose name is subscribed to the preceding certificate or attestation of affidavit, was, at the time of his signing the same, and now is, a justice of the peace within and for the county aforesaid, duly commissioned and qualified, and acting in that capacity, and that full faith and credit are due to all his acts as such.

In testimony whereof, I hereto set my hand, and affixed the seal of said court, at office in the city of Saint Louis, in the [L. S.] county and State aforesaid, this tenth day of August, in the year of our Lord one thousand eight hundred and forty.

HENRY CHOUTEAU, *Clerk.*

Answer of Charles Gratiot.

WILLIAM A. BRADLEY,
vs.
PIERRE CHOUTEAU, Junior, CHARLES GRATIOT, and CLEMENT COX.

In the circuit court of the District of Columbia, for Washington county.

The separate answer of Charles Gratiot to the bill of complaint of William A. Bradley, the above named complainant.

This respondent now, and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of excep-

tion to the manifold errors and insufficiencies in the said bill contained, for answer thereto saith, that he knows nothing of the terms of the agreement between the said parties, otherwise than as they appear on the papers executed by them. He knows that the deed of trust executed by complainant to him was carefully examined by the complainant, and he has no doubt complainant fully understood all its terms. He knows that Capt. Charles M. Thruston was not present at the negotiations between the parties about the change of security, and that the complainant said that Captain Thruston was at Cumberland.

This respondent intended to cause the property of the complainant, mentioned and conveyed in the said deed of trust, to be sold, to satisfy the amount claimed by said Pierre Chouteau, jr., on the said notes of Turner and Kinney.

This respondent denies all further knowledge of the matters in the said bill stated, without that, *that*, &c., and prays to be hence dismissed, with his reasonable costs, &c.

C. GRATIOT,
C. COX, *Sol'r.*

STATE OF MISSOURI, *county of St. Louis:*

On this eighth day of August, in the year 1840, personally appeared before the undersigned, a justice of the peace for the county aforesaid, Charles Gratiot, the above named respondent, and makes oath on the holy evangelists of Almighty God, that the foregoing answer, so far as stated of his own knowledge, is true, and he believes it to be true in all other particulars.

C. GRATIOT.

Sworn to and subscribed before me, the date above written.

LOUIS T. LABEAUME,
Justice of the peace St. Louis county.

STATE OF MISSOURI, *county of Saint Louis, ss:*

I, Henry Chouteau, clerk of the county court within and for the county of Saint Louis, in the State of Missouri, which is a court of record having a seal, do certify that Louis T. Labeaume, esquire, whose name is subscribed to the foregoing certificate or attestation of affidavit, was at the time of his signing the same, and now is, a justice of the peace within and for the county aforesaid, duly commissioned and qualified, and acting in that capacity, and that full faith and credit are due to all his acts as such.

In testimony whereof, I hereto set my hand, and affix the seal of said court, at office in the city of Saint Louis, in the [SEAL.] county and State aforesaid, this tenth day of August, in the year of our Lord one thousand eight hundred and forty.

HENRY CHOUTEAU, *Clerk.*

Answer of C. Cox.

Sep: ıte answer of Clement Cox, one of the defendants to the bill of complaint of William A. Bradley, complainant.

This respondent, saving and reserving to himself, at all times, all manner of exception to said bill of complaint for the manifold errors and imperfections of form and substance therein appearing; nevertheless, now proceeding to answer the said bill, so far as advised that an answer from him is material, for answer saith, he believes and admits that, on or before the 26th of February, 1838, defendant Pierre Chouteau, jr., received from the complainant and Charles M. Thruston the two promissory notes of Levi C. Turner and Henry L. Kinney, partially described in said bill, and also received the two notes of the complainant also described in said bill; a fuller description of all those notes will be found in the complainant's exhibit B, to which respondent is enabled to add that he now holds, as attorney for said Chouteau, two notes of said Kinney and Turner respectively, believed to be those above alluded to, and which are both dated at New York, and made payable at the Merchant's bank. Respondent thinks he has understood that all the aforesaid notes were passed to defendant Chouteau on account of lands sold by him, but he is unable to state the particulars, nor does he suppose that an answer from him, farther than as above, as to the consideration of the transfer of said notes, will be considered material. Respondent farther saith, that he believes and admits complainant's exhibits A and B are true copies of genuine originals, which have lately been placed in his possession as attorney for defendant Chouteau. Respondent was consulted by defendant Chouteau (introduced by defendant Charles Gratiot) shortly before February 26, 1838, respecting a security to be taken from complainant for debts owing by him to defendant Chouteau; this respondent has preserved no note of the occurrences at the time on the subject, and not foreseeing any future occasion to recur to them, his remembrance on the subject is perhaps less distinct than it otherwise would be. He has but a faint remembrance of any occurrence at the time, respecting the original of complainant's exhibit A; he now traces on the original a faint interlineation in pencil by this respondent, copied in ink in the handwriting of complainant, from which he is satisfied that this original must have been submitted for his consideration at that time, and he advised the change interlined as above; but he has no farther recollection of having seen the instrument at the time, nor of having witnessed its execution, nor of having heard any discussion between the parties to it, connecting it with the deed of trust, of which exhibit B is a copy.

The original of exhibit A is in the handwriting of the complainant's counsel, Joseph H. Bradley, esquire, excepting the interlineation mentioned; and this respondent thinks he was shown by defendants, Chouteau and Gratiot, a deed of trust in the same handwriting for the security of said Chouteau, which was unsatisfactory because of its terms, or of the property conveyed, or perhaps both.

Respondent was retained by said defendants to examine the title of the property included in the original of exhibit B, and prepare a deed of trust for the same in conformity with their instructions. They were satisfied with the title as reported, and the deed of trust, the original of exhibit B, was then prepared and approved by them; respondent then, on the day of its date, carried it to the complainant at the Patriotic Bank of Washington, accompanied by defendant Gratiot, and he thinks by defendant Chouteau also; respondent there read and explained the provisions of the deed to the complainant by his request, who expressed himself satisfied with the same, and on the same day executed the deed, and returned it executed to the defendant Gratiot, who handed it to this respondent; and respondent, on the same day, left it with the clerk of the circuit court for the county aforesaid for record. Respondent thinks that, after the deed was read to complainant, the parties did not separate until the deed was fully executed, magistrates having attended at the banking house to take the complainant's acknowledgment, and Mrs. Bradley having made her acknowledgment to them from a carriage in front of the house. Respondent has understood and believes that complainant's note at one year, described in his bill, has been fully paid; and he was present when Major J. F. A. Sanford, the agent of defendant Chouteau, arranged with complainant for an extension of the other note, and executed the paper marked exhibit No. 1. The paper marked exhibit C, so far as it purports to be in the handwriting, or the act of this respondent, was given in the following circumstances: Major Sanford and respondent were negotiating with complainant for some arrangement of the notes of Turner and Kinney, before referred to; complainant asked an opportunity of conferring with his counsel, and subsequently requested a statement of the steps taken to recover said notes from the makers, for the information of his counsel. The statement was then drawn up by respondent, according to the information on the subject possessed by Major Sanford, and communicated by him to respondent, and was handed to complainant. This occurred about February 27 or 28 last, and at the latter date payment of said notes of Kinney and Turner was demanded of complainant and Thruston, in behalf of defendant Chouteau; the discrepancy between the deed of trust and the agreement of Bradley and Thruston was then a subject of conversation, but whether then first discovered by complainant this respondent does not know. The negotiation of Major Sanford and respondent with complainant, which was continued during several days, was with reference to the deed of trust; reference was made to the agreement which was in possession of Major Sanford, and at request of complainant it was produced, and a copy taken, probably commenced by complainant, but principally, if not wholly, in the handwriting of Col. C. M. Thruston, who, on this occasion, was present. Respondent denies all knowledge or recollection of the agreement charged, that

the terms and conditions of the deed of trust and agreement should be the same, or of any accident, mistake, or misapprehension of respondent in framing the deed of trust, or of the residence or ability to pay of Henry L. Kinney. Daniel Webster appears to be an endorser on the notes of Turner and Kinney, but respondent knows nothing of his ability to pay; he has understood and believes that, up to the commencement of this suit, no legal proceedings have been had against him to compel payment. Respondent admits the purpose of defendant Gratiot to advertise under the deed of trust, as charged, and that respondent has so advised complainant as charged. Without this, &c., and respondent prays to be hence dismissed, with his proper costs in this behalf sustained.

CLEMENT COX.
C. COX, *Sol'r.*

DISTRICT OF COLUMBIA, *county of Washington, sct:*

On this 29th day of August, 1840, before the subscriber, a justice of the peace in and for the said county of Washington, personally appears Clement Cox, the within defendant, and makes oath on the holy evangely of Almighty God, that the facts stated in the within answer, so far as stated of his own knowledge, are true, and he believes the others to be so. J. I. STULL.

Motion to dissolve injunction.

Whereupon the said defendants, by their attorney aforesaid, moved the court to dissolve the injunction on the bill, answers, and exhibits, &c.

Which motion was regularly continued at rules, for the first Monday in January, eighteen hundred and forty-one, for final hearing.

When Pierre Chouteau, one of the defendants, by his solicitor aforesaid, filed in court here his supplemental answer.

Supplemental answer of P. Chouteau, jr.

Supplemental answer of Pierre Chouteau, jr., to the bill of complaint of William A. Bradley, against him and others.

This respondent, now making the like savings and reservations as were contained in his original answer to said bill of complaint, nevertheless now farther answering the same, for supplemental answer saith, that the agreement executed by complainant and Charles M. Thruston, a copy of which is exhibited with complainant's bill, was not sought by this respondent, but was proposed by complainant, and its object, as explained by complainant and then understood by respondent, was to protect complainant, by binding said Thruston jointly with him: the deed of trust was prepared under the instructions, and in accordance with the views of respondent, and respondent considered himself sufficiently protected thereby; the agreement was prepared by complainant, or under his instructions, and respondent attached no importance to it; and especially he avers, that he had not at the time any personal know-

ledge or information inducing him to attach any value whatever to the obligation of said Charles M. Thruston, as guarantor of the notes of Kinney and Turner, mentioned in said agreement; and respondent never executed, nor was asked or expected by complainant to execute said agreement, or any duplicate or counterpart thereof, so far as respondent has any recollection.

Respondent farther saith, that the said Thruston was at no time present at respondent's negotiation with complainant at the city of Washington, in February, 1838, and as far as known to respondent, took no part therein, and respondent had held no communication with him until they met at Cumberland, as stated in respondent's original answer.

And respondent saith, that he did not knowingly or intentionally, at any time enter into any agreement with said Thruston and complainant, or either of them, to resort to suit or legal proceedings against Daniel Webster, the endorser, for the recovery of said notes of Kinney and Turner, nor did said complainant or Thruston, so far as respondent has any knowledge, recollection, or belief, require, ask, or intimate any expectation or desire for such resort.

And respondent avers, that complainant had reason to know, and respondent verily believes did know, that respondent, from his feelings towards said Daniel Webster, would have felt great reluctance to assume, intentionally, the obligation of prosecuting strict legal measures against said Webster, for the recovery from him of said notes of Kinney and Turner, because respondent avers, that complainant had also been bound as guarantor for the note of Daniel Webster, mentioned in respondent's original answer, and respondent voluntarily released complainant from all responsibility therefor, and consented to look to said Webster alone for payment, at the time of taking the deed of trust, rather than assume the obligation of strict legal diligence against him.

And farther respondent saith, that he reiterates, and now reasserts, all and singular the allegations and statements of his original answer. And he prays to be hence dismissed, &c.

PR. CHOUTEAU, JR.

DISTRICT OF COLUMBIA, *county of Washington, sct:*

On this 28th day of March, 1841, before the subscriber, a justice of the peace, in and for said county, personally appears Pierre Chouteau, jr., the above respondent, and makes oath on the holy evangely of Almighty God, that the allegations contained in the aforegoing supplemental answer, so far as stated of his own knowledge, are true, and he believes the others to be so. And he farther saith, that the omission to include said allegations in his original answer, was through inadvertence, and in ignorance of their materiality, and they are now set forth in the present answer, because he is advised by his counsel that they may be material.

Sworn before— J. I. STULL.

And the said parties, by their solicitors aforesaid, filed in court here the following agreement, to wit:

Agreement of counsel.

In this cause it is agreed that either party may take depositions under the judiciary act, subject to all the rules and exceptions thereof, as though the suit was at common law.

JOS. H. BRADLEY, *for Plff.*
April 5, 1841. CLEMENT COX, *for Defts.*

Depositions by defendants.

Deposition of R. Crooks.

STATE OF NEW YORK,
City and county of New York, ss:

Be it remembered, that on this 23d day of November, 1841, before me, Daniel P. Ingraham, associate judge of the court of common pleas, for the city and county of New York, personally appeared Ramsay Crooks, of said city of New York, being of sound mind and of lawful age, a witness for the defendants in a certain suit depending in the circuit court of the District of Columbia, for the county of Washington, sitting as a court of chancery, wherein Wm. A. Bradley is complainant, and Pierre Chouteau, jr., Charles Gratiot, and Clement Cox, are defendants; and the said Ramsay Crooks being by me carefully examined, and cautioned, and sworn to testify the whole truth, deposes and says, that he is acquainted with the parties to said suit, and understands that the controversy therein relates in part to a promissory note of Henry L. Kinney, endorsed by Daniel Webster, and passed by the above complainant to the defendant Chouteau, with some guarantee of payment, and of which note the following is a copy:

No. 125.—1*st Oct., New York.*

Drs. 5,000. 24 MARCH, 1837.

On the first day of October next, I promise to pay to the order of Daniel Webster, payable at the Merchant's Bank, five thousand dollars.

(Signed) HENRY L. KINNEY.

AF 436—New No. 942.—Due 4th Oct'r, 1837.

Endorsed. DANIEL WEBSTER.
PRE. CHOUTEAU.

Pay to the order of Ram'y Crooks, president Am. Fire Co.
RAM'Y CROOKS,
President American Fire Co.

That said original note was in the charge of this deponent for safe keeping and collection from July 8th, 1837, to February 27th, 1838, and at the latter date was delivered by deponent to said Chouteau, at Baltimore, in Maryland, to be carried by the latter to

the western country for collection from the maker Kinney; said Chouteau was then on his way to his residence in St. Louis, Missouri, and expected to find Kinney in Illinois, and deponent, who then and ever since has resided in said city of New York, met said Chouteau at Baltimore for the purpose, in part, of delivering said note to him; the note was afterwards returned to deponent at New York, with the information that Kinney had left the west for some of the eastern cities, as was supposed, and with instructions to take the necessary measures, by suit or otherwise, for collecting the amount from him. Deponent cannot specify when he received the note on this occasion, but thinks it was towards the latter part of April, 1838. He at once instituted enquiries in different quarters for Kinney, and pursued them until finally, during the month of May of the same year, he was informed that Kinney was at Washington, and was shortly to leave that city for New York. Deponent's information was such as left him without doubt that Kinney would certainly come to New York, and led deponent to expect him daily. Deponent was led to think that the chance of getting the money from Kinney would be much better in New York than in Washington, and besides did not know how long Kinney might tarry at New York, and feared that by going to Washington in quest of him, he might miss him altogether; deponent therefore remained at New York, inquiring frequently for Kinney at the principal hotels, and also of acquaintances coming from the south that he from time to time met, until finding that his stay at Washington was prolonged much beyond expectations, and fearing that he might omit to come to New York, deponent on the first week of July of the same year, went to Washington in quest of him, and found on arrival that the other had shortly before gone to the west. Deponent delayed his journey to Washington, and awaited his (Kinney's) arrival, solely because, from the best information he could obtain, it appeared to him the most proper course for obtaining payment from Kinney.

Being cross examined by the complainant, William A. Bradley, deponent says: "He did not institute proceedings against Kinney in Washington, because he expected him in New York from day to day, and that he would then pay the claim before mentioned. Deponent supposed there was a better chance for Kinney of raising the money in New York than at Washington, because he knew he was a landholder, and thought he could dispose of his property here to better advantage. That deponent not being acquainted with the laws in Washington, is unable to say whether the debt could have been secured if Kinney had been sued in Washington. Deponent has asked payment of the said note drawn by Kinney of the endorser, Daniel Webster, several times, but never instituted legal proceedings against him for it. Deponent has also asked payment of the note drawn by Levi C. Turner for $5,000, of the said Daniel Webster. He instituted legal proceedings against Turner, but not against Daniel Webster. That deponent has received from

Daniel Webster, on account of his note for $10,000, and for the use of Pierre Chouteau, the following sums of money, viz: on the 31st day of October, 1837, two thousand dollars; on the first day of March, 1838, two thousand five hundred dollars; on the third day of March, 1838, by check on Philadelphia, five hundred dollars, less the discount of nine dollars and eighty cents; and on the fifth day of July, 1838, by a bill drawn on him in England for one one thousand pounds sterling, amounting, with the premium of nine and a half per cent., to four thousand eight hundred and sixty-six $\frac{67}{100}$ dollars; and further deponent saith not.

RAM'Y CROOKS.

Taken and sworn before me, the 23d day of November, 1841.

D. P. INGRAHAM,
Associate Judge of Ct. Common Pleas.

I further certify, that the reason for taking the aforegoing deposition is, that said witness lives at the city of New York aforesaid, being more than one hundred miles from the city of Washington, the place of trial of said suit; that said deposition is taken de bene esse in said cause; that before taking the same, a notification from me to said William A. Bradley to be present at the taking of said deposition, and put interrogatories if he should think fit, was first made out and served on said Bradley, at said city of New York, and within twenty miles of the place of taking said deposition, four days before the taking of the same, and that on the taking thereof, I was attended by the said William A. Bradley, who cross-examined the said witness. That said deposition, when made, was reduced to writing by me, and subscribed by the said witness as his testimony in the premises, in my presence. I have retained the said deposition for the purpose of sealing up, directing, and forwarding the same with my own hand, to the court aforesaid.

I further certify, that I am not of counsel or attorney to any of the parties to said suit, nor in any manner interested in the event of the cause.

In testimony whereof, I have hereunto set my hand and seal, the twenty-third day of November, 1841.

D. P. INGRAHAM, [SEAL.]
Associate Judge of New York Common Pleas.

Deposition by defendants.

Circuit Court of the District of Columbia, for the county of Washington.

P. CHOUTEAU, JR., & al. ats. W. A. BRADLEY. } In chancery.

The deposition of Norman H. Pinple, of Pieria, in the county of Pieria and State of Illinois, taken before the hon. Thomas Ford, associate justice of the supreme court of the State of Illinois and

judge of the ninth judicial circuit of said State, at the house of John Lyon, inn-keeper in the town of Hennepin, in the county of Putmore and State of Illinois. He, the said Norman H. Pinple, being first duly affirmed, according to law, to tell the truth, the whole truth, and nothing but the truth, so far as he should be interrogated, and in answer to the first interrogatory proposed on the part and behalf of the said P. Chouteau, jun'r., et al., this deponent deposeth and saith:

1st interrogatory. Are you acquainted with Henry L. Kinney, and if so, where did he reside; what were his pursuits; at what time did he leave his home in 1838; where did he go; how long was he absent; and when did he return, and where has he been since?

Ans. I have known Henry L. Kinney for about ten years, he resides in Peria, in the county of Lasolle and State of Illinois, from the year A. D. 1836, until some time in September A. D. 1838; some time in the spring of A. D. 1838, he left Penn and went east, to what place deponent cannot state; he remained absent until some time in September following, when he returned to Losalle county; he left again in about ten days or two weeks for the south, and has never since returned. It is expected and believed that he resides, and has since he left here, resided in the province of Texas, now the boundary line between that and Mexico; during his residence in this State, he was engaged in various pursuits, such as merchandising, speculating in lands, canal contracts, &c., &c.; after his return from the east, as above stated, he did not make his appearance much in public; and previous to that time, he was very frequently called from home in various directions, and was absent a great proportion of his time.

2nd interrogatory. Was he a monied man, with a family, and permanent establishment, or otherwise; what were his circumstances when he left home, and what have they been since; could a debt to Mr. Chouteau, of $5,000 and upwards, be made by any suit in the ordinary way, or by any compulsory legal proceedings adopted against him, as late as June or July, 1838? If yea, state the process and necessary foundation therefor.

In answer to the 2nd interrogatory, this deponent saith: That said Kinney was not a married man, with a permanent establishment, and that at the time he left the State of Illinois this deponent entertains no doubt that the said Kinney was insolvent to a large amount; deponent knew at the time considerable of the circumstances of the said Kinney, he at the time being a practising attorney, and in the habit of attending the courts in the county of Losalle aforesaid, and intimate with the friends and neighbors of said Kinney; it is the opinion of witness, from what he knows of said Kinney's circumstances, that a debt of $5,000 00 could not have been collected of said Kinney by any compulsory legal proceedings adopted against him as late as June or July, 1838, and that he was insolvent at that time; and further saith not.

N. H. PINPLE.

STATE OF ILLINOIS, *ss:*

This day personally appeared before me the undersigned, one of the justices of the supreme court of said State, Norman H. Purple, of Pieria, *is* said State, and he being by me *me* carefully examined, and cautioned, and affirmed, to testify the whole truth, he, the said Norman H. Purple, did affirm and depose as set forth in the foregoing deposition, by him, the said Purple, reduced to writing, and afterwards by him subscribed, in the presence of me, the said justice. This deposition was taken, sworn and subscribed, before me, at Hennepin, in the county of Putman, State of Illinois, on this 2d day [of] May, in the year of our Lord one thousand eight hundred and forty-two; and I do further certify that the distance from Washington city, in the District of Columbia, to Hennepin aforesaid, is one thousand miles, and that it is the same distance from Washington city aforesaid, to Pieria aforesaid the residence of the said witness, Norman H. Purple; and I do further ce tify that the foregoing deposition was sealed up and endorsed, as on the envelope, by me at the time of taking the same; as witness my hand and seal.

THOMAS FORD,
Justice of the Supreme Court of the State of Illinois.

Whereupon the said cause was regularly continued until the fourteenth day of January, eighteen hundred and forty-three, when the said parties by their solicitors aforesaid, filed in court here the following agreement, to wit:

Agreement of counsel.

BRADLEY, vs. CHOUTEAU & al. } In chancery.

It is agreed in this cause, 1. That all the depositions and certificates filed in the cause may be read in evidence, subject to exception to the competency of the witnesses respectively deposing or certifying. 2. That the note of Henry L. Kinney, referred to in the deposition of Ramsay Crooks, is the same note of said Kinney referred to in complainant's bill. 3. That the record of judgment against Levi C. Turner, is the same referred to in Geo. B. Butler's certificate, and the note of said Turner, mentioned in said record, is the same note of said Turner referred to in complainant's bill, and was prosecuted by the plaintiffs therein as agents for Mr. Chouteau. 4. The answers of the *of the* defendants Gratiot and Cox, may be read in evidence as the depositions of said parties, taken under order of the court, subject to exception to the competency of said parties as witnesses for the defendant Chouteau. 5. It is admitted that defendant Chouteau, on receiving from the witness Crooks, as testified by the latter, the note aforesaid of Kinney, proceeded at once to his residence at St. Louis, Missouri, by the usual course of public conveyances, was detained

at Pittsburg by the want of conveyance for 10 days or a fortnight; and having arrived at St. Louis about April 1, proceeded to enquire for Kinney, who resided about 250 miles off in Illinois, and being advised that he had left for the eastward, forwarded the note to said witness Crooks for collection, about April 16 of the same year. This cause to be set for hearing on the bill, answers, general replication, and testimony.

JOS. H. BRADLEY, *for complainants.*
CLEMENT COX, *for defendants.*

January 14, 1843.

The letter of Ramsay Crooks to Clement Cox, of March 30, 1843, and the memorandum of the latter endorsed thereon, and the mortgage executed by Charles M. Thruston to Messrs. P. Chouteau and Marie P. Leduc, are also admitted in evidence; also a receipt executed by Messrs. Leduc and Chouteau; and thereupon the said cause was set for hearing, and regularly continued at rules until March eighteen hundred and fourty-three; when the said plaintiff had leave to amend his bill, and filed in court here the following amended bill, to wit:

Amended bill.

To the honorable the judges of the circuit court of the District of Columbia, sitting as a court of equity, for the county of Washington:

Humbly complaining, sheweth unto your honors your orator William A. Bradley, that, on or about the day of 18 , your orator exhibited his original bill, in this honorable court, against Pierre Chouteau, Charles Gratiot and Clement Cox, the defendants hereto, stating (here insert the substance of that bill, copied in page) praying, therefore, that an injunction should issue and (here insert the prayer of the bill, copied in page .)

And your orator further shews to your honors, that all the said defendants appeared, and put in their answers to said original bill, and witnesses have been examined, as in and by the proceedings in said cause of record in this honorable court. And your orator further shews to your honors, that since the filing of the said original bill of complaint, he hath fully paid, and taken up, and now produces in court as part of this bill, the promissory note in his said original bill mentioned, which had been passed by said Pierre Choteau, jr., to the said J. F. A. Sandford, in the said bill named, and the payment of which had been extended to 26 July, 1840; being the second of the two notes given by your orator to said Pierre Choteau, jr., and secured in and by said deed of trust from your orator to said Charles Gratiot, exhibited with said original bill. And your orator further shews to your honors, that it will further appear by reference to said original bill, and to the answers of the said Pierre Chouteau, jr., and of the said Clement Cox, that there are material and important differences upon certain questions of fact between your orator and the said Pierre Chouteau, jr., and dis-

crepancies between your orator and the said Clement Cox; and for a better understanding of the said cause, and to present the facts of the said case fully, perfectly, and at large, your orator files this his amended bill. And your orator shews unto your honors, that some time in the winter of the years 1836—1837, your orator contracted with a certain George F. Strother, acting as the agent and attorney of Pierre Chouteau, sen'r, and M. P. Leduc, to purchase of said Pierre Chouteau, sen'r, and M. P. Leduc, their interest and estate in a large tract of land, lying in the States of Arkansas and Missouri, for a large sum of money; (this purchase is erroneously stated in the original bill, to have been made of Pierre Chouteau, jr., and is the same purchase, and not other which is therein stated, and the error in that statement arose from the fact of Pierre Chouteau, jr., being the active agent in all the subsequent transactions hereinafter set forth and stated;) in this transaction your orator acted on the behalf of others as well as himself, and was so understood to be acting at the time of said purchase. And on the first day of June, 1837, the said Pierre Chouteau, sen'r, and Maria P. Leduc, executed to John Glenn and Charles M. Thruston, their successors and assigns, in consideration of the sum of $53,699, paid to them by said Glenn and Thruston, a deed conveying to them the said land, for the purposes declared in a certain declaration of trust executed the 21st day of February, 1837. Part of the said purchase money was composed of the notes of Henry L. Kinney and Levi C. Turner, particularly referred to in said original bill: and a mortgage was given by said Glenn and Thruston, or by the latter only, to said Chouteau and Leduc, to secure the payment of these and other notes, given as part of said purchase money: and your orator as advised, believes and charges, that the said mortgage was never recorded, and was subsequently destroyed. Your orator further shews, that these were passed to the said Pierre Chouteau, by the said Charles M. Thruston, acting for himsalf, your orator and others, interested in said purchase, and at the time of filing his said original bill, he did not know how, or at what time precisely, these notes were passed to said Chouteau. Your orator further shews, that in the fall of the year 1837, the notes given by and on behalf of himself and others, on account of said purchase, being unpaid, he addressed a letter to the said George F. Strother, still acting as agent and attorney for said Chouteau, dated Washington, 8 Nov., 1837, in which he submitted, through said Strother, certain propositions for the payment of said notes, a true copy whereof is herewith filed as part of this bill, marked complainant's ex. That not having any reply to this letter, he subsequently, on the 14th Nov., 1837, by letter of that date at New York, communicated the said propositions to Pierre Chouteau, sen'r, and he files herewith, as part of this bill, a true copy of said letter, marked complainant's ex.: that not having any reply to this letter, your orator being informed that said Pierre Chouteau, jr., was in the city of New York, he addressed a letter

to said Pierre Chouteau, jr., at New York, dated the 7 Dec'r, 1837, a true copy of which is herewith filed, referring to the propositions he had before submitted, and asking his reply: and he herewith files, as part of this bill, a true copy of said letter of 7 Dec'r, 1837, marked complainant's exhibit. To this letter, your orator received from said Pierre Chouteau, jr., an answer, dated the 15 Dec'r, 1837, at New York, and addressed to your orator at Washington, the original of which he herewith exhibits as part of his said bill, marked complainant's exhibit: and to this your orator replied, inviting the said Pierre Chouteau, jr., to visit him at Washington, to make the final arrangements. And your orator shews to your honors, that it will appear by reference to the said correspondence, first, that your orator submitted to the said Pierre Chouteau, jr., four distinct propositions: the second of which was to pay the balance of $24,699, in bonds of the American Life and Trust Company, payable in three to five years, bearing interest at 5 per cent. &c. The third to pay the balance in my note, to be paid at my pleasure within 5 years, to be secured by mortgage on an interest in the National Hotel, $10,000; on an undivided half of square 356, including Bradley's wharf, steam saw mill, and grist mill, and large brick warehouse, $12,500; 34 building lots in square 387, worth $300 each, $10,200; and it will further appear by reference to the letter of said Pierre Chouteau, jr., dated 15 Dec'r, 1837, and herein exhibited, that he rejects at once all the said propositions, but these two, and as to them he says: "If I am to raise the money from what you place in my hands, I decidedly prefer the bonds of the American Life and Trust Company, at their fair market value; but it will be much more agreeable to both my father and myself, if you will make your own arrangements, and pay the amount of the mortgage, which shall thereupon be given up, when you and Captain Thruston shall have obligated yourselves to pay within two years, (as you propose) the notes already given on account of the purchase; if they are not collected by that time, legal proceedings being instituted by me without delay, against such of the parties as do not forthwith secure the payments to my satisfaction." And your orator further shews, that at the time of the filing of his said original bill, he did not suppose or believe that any doubt or controversy did or could exist between the said Pierre Choteau, jr., and himself, as to the fact stated in the said bill, that the said Charles M. Thruston was equally with your orator liable for the said debts, in the same manner, to the same extent, and upon the like terms; and that it was so distinctly understood by the said Pierre Chouteau, jr., and after the answer of the said Pierre Chouteau, jr., had been filed in the said cause, your orator in vain looked for the letters which he now produces, and which had been mislaid, and did not discover them until a very few days since, and your orator now produces them, and requires the said Pierre Chouteau, jr., to answer and declare, whether the said copies are true copies, and to produce the originals;

and to answer and declare whether the said exhibit is his own proper handwriting or not; and your orator further shews to your honors, that after the said correspondence, and some time in the month of February, 1838, the said Pierre Chouteau, jr., did visit the city of Washington, and did call upon your orator to complete his arrangements to pay the amount of the mortgage, and secure the payment of the said notes of said Kinney and said Turner, according to the proposition of said Pierre Chouteau, jr., contained in his said letter, by giving the obligation of the said Charles M. Thruston, and your orator, as set out in said original bill of complaint, with the exhibits, and the deed of trust exhibited with said original bill.

And your orator expressly charges and avers, that the said Pierre Chouteau, jr., fully treated with your orator upon the basis of that proposition, and having definitively agreed with your orator as to the terms of the final arrangements to be made between them, authorized your orator to have them embodied in legal form by counsel, and then fully and perfectly comprehended and assented to them; and your orator did, with the full approbation of the said Pierre Chouteau, jr., have them so put into form; and your orator did then submit them to the said Pierre Chouteau, jr., and he avers and declares that the said Pierre Chouteau, jr., did take the original paper so prepared by counsel, and which is exhibited with the answer of said Chouteau, and which is in the handwriting of Joseph H. Bradley; and he did also take the said deed of trust which had been prepared by said Joseph H. Bradley, and which was meant and intended by your orator, and so understood by said Chouteau, to form part of the said arrangement, and which was meant and intended to embody the same terms and conditions as were and are fully set out in said agreement so executed by said Thruston and your orator as aforesaid, both of which papers were dated at the same time by the said Joseph H. Bradley, on the 23d day of February, 1838. And your orator avers and declares, that the said Pierre Chouteau, jr., did not then, or at any time after, up to the demand on the said Charles Gratiot as trustee to sell the said property mentioned in said deed of trust, pretend, or claim, or represent to your orator that the said deed of trust contained other or different terms or conditions than those contained in said writing obligatory of said Thruston and your orator. And your orator further shews, that the said Pierre Chouteau, jr., took both the original agreement of said Thruston and your orator, and the said deed of trust, to examine and submit to his counsel; and he avers and declares, that no objection was made either by the said Chouteau or his said counsel to the terms and conditions of said trust, but the said counsel suggested that there was some defect in the description of some part of the property intended to be conveyed by said deed, and that it was better to have a new deed drawn. And your orator calls upon the said Clement Cox, esq., particularly, to state

whether, in the presence of your orator, or at any time, he the said Clement Cox was instructed to change or modify the terms of the trusts of the said deed, and to set forth and shew how, and when, and by whom, he was so instructed, if he did receive any such instruction.

And your orator avers and declares, that so far as he is informed and believes, and he charges the fact to be so, that both the said original agreement, so as aforesaid executed by your orator and the said Thruston, and the said original draft of the deed of trust, were delivered by the said Chouteau to the said Clement Cox, and that Mr. Cox had the said deed of trust and the said original agreement in his possession, and made an alteration in pencil in the said original agreement, which was written over in ink by your orator at the time of the execution of the said deed of trust to the said Charles Gratiot, and of the delivery and execution of the said agreement by your orator. And your orator now distinctly recollects and declares, that said agreement was not signed by him, although it bears date the twenty-third day of February, 1838, until the 26 day of February, and that it was executed simultaneously with the said deed of trust, and that neither the original drafts of said agreement, nor the original draft of said deed of trust so as aforesaid, was executed by your orator until the said deed of trust was executed on the 26 day of February, 1838, to the said Charles Gratiot. And your orator further shews, that from the day on which he delivered the original draft of the said deed of trust, made by his counsel Joseph H. Bradley, to the said Chouteau, to this day, he does not recollect ever to have seen the said paper; but when he executed the said deed to the said Gratiot, if he read it over at all, and to the best of his recollection and belief he never did read, or hear it read, he well believed that it contained the same conditions and terms of trust as were contained in the said original draft, and not other or different terms, and that the only difference between the said original draft and the said then executed by him, was in the description of the property thereby intended to be conveyed. To the end therefore, that the said Pierre Chouteau, jr., and the said Clement Cox, may true and perfect answers make to all and singular the matters and things hereinbefore contained, and that the said Pierre Chouteau, jr., may answer and declare whether the said copies of letters so as aforesaid addressed by your orator to him, as hereinbefore stated, are true copies, and that he may produce the originals thereof; and that he may set forth and shew from whom the proposition for the settlement of the said purchase money for the said tract of land came; and that he may state particularly for what purpose he wished to consult counsel after the original draft of the said deed of trust had been prepared; and that he may state what modifications in the said deed were at any time suggested by him; and whether he ever at any time suggested any modification thereof to your orator; and if he at any time suggested or proposed to your

orator that the terms of the said deed of trust should be different from the terms of the said agreement between your orator and Charles M. Thruston of the one part, and the said Pierre Chouteau, jr., on the other, as proposed in the said letter of said Chouteau, of 15 Dec'r, 1837; and whether the said agreement and deed of trust were or were not delivered by your orator at the same time; and whether the said Clement Cox did not deliver to him the said Chouteau, jr., the said original draft of the said deed of trust; and if so, what he did with the same; and whether he has not the same in his possession now; and if so, to produce the same; and if he has it not, where the same now is; and whether he did or did not present the said agreement to the said Charles M. Thruston, to be signed by him; and whether he did then, or at any other time, inform the said Charles M. Thruston, that he had any different agreement sucured by deed of trust with your orator; and whether your orator ever assented to any terms as to the security of the notes of said Kinney and Turner, different from those contained in the letter of said Chouteau, jr., of 15 December, 1837; and if so, when, and at whose instance; and who was present; and how was it done; in writing or by parol; and if in writing, to produce the same; and that the said Clement Cox may answer and declare what instructions he received from the said Chouteau in regard to the said trust, or the title to the land mentioned in it, or the terms thereof; and whether the said original drafts of the agreement and deed of trust, in the handwriting of Joseph H. Bradley, were or were not delivered to him; and if he received any instructions from said Chouteau to modify or change the terms of the said deed of trust; and if he heard, or understood, or was advised by said Chouteau, that the terms of the said trust were to be other or different from those mentioned in the said draft of said agreement; and if so, whether he at any time communicated said instructions to your orator, and when; and also whether he was not employed solely to look into the title and description of the property intended to be conveyed by said trust deed; and whether the said deed prepared by him, and now held by Charles Gratiot, was not executed at the time of the delivery of the said agreement; and whether he, said Cox, did not carry the said draft of the said agreement, being still open and unexecuted by your orator, together with the said draft of said deed of trust prepared by himself to the Patriotic Bank, to be executed by your orator; and whether the said Charles Gratiot and the said Chouteau were not also there; and whether two justices were not sent for, and come to the said bank; and whether Mrs. Bradley, the wife of your orator, did not come there in her carriage, and while in her carriage acknowledge the said deed; and whether the said deed was ever read over by, or to your orator; and whether at any time any suggestion was made in the presence of the said Cox, or your orator, that the terms of the trust of the said deed had been in any manner modified or changed, or were different from

those contained in the said draft of said agreement; and that this may be deemed and taken as an amendment to said bill, and the said Gratiot may be decreed to release to your orator and his heirs the said property in said deed conveyed by your orator upon the trust therein mentioned; and for such other and further relief as to your honors may seem meet.

W. A. BRADLEY.
JOS. H. BRADLEY,
Sol'r for Compl't.

DISTRICT OF COLUMBIA,
Washington county, sc:

William A. Bradley, who signed the foregoing bill of complaint, personally appeared this 22d day of March, 1843, before me, the subscriber, a justice of the peace in and for the county aforesaid, and made oath according to law, that the facts stated in the foregoing bill as of his own knowledge are true, and he believes those to be true which are stated on the information of others.

Sworn before me,

CLEMENT T. COOTE, *J. P.*

Complainant's exhibit No. 2, referred to in the aforegoing amended bill.

Bradley to Strother—*W. A. Bradley to George F. Strother.*

WASHINGTON, 8 *Nov.*, 1837.

DEAR SIR: Your departure from N. York before my arrival proved to be a fruitful source of loss and disappointment [to] me. I lost by it not less than $20,000, perhaps more. This you did not, could not anticipate, and I only mention it as a subject of regret, not blame. You know I am very desirous to settle with Mr. Chouteau, and make him entirely safe; and to place him in a better situation than he would be under the mortgage, as, if the title should fail, he would possess but slender security for his money; now to render him perfectly safe I propose, first, to pay the balance of $24,699 in stocks of the Banks of the Metropolis and Patriotic Bank at par; they are worth, as you know, in ordinary times, a premium of 8 to 10 per cent; second, to pay said balance in bonds of the (Morris Canal and Banking Co.) American Life and Trust Co., payable in 3 to 5 years, bearing interest at 5 per cent; third, to pay the balance in my note to be paid at my pleasure within 5 years; fourth, if I come into possession of the stock, I propose to give my note as aforesaid, to be secured by $50,000 of the stock of the General Insurance Co. of Maryland. In addition to the foregoing, I will give the joint obligation of Capt. Th. (Thruston) and myself, agreeing to pay within two years all the notes given on account of the purchase which have been protested, provided they shall not be sooner paid; Mr. Chouteau to take the necessary legal steps for their collection. I have

now to ask of you to place the partially executed mortgage in my hands, and I will place in yours, in escrow, a mortgage on the property described in the 3d proposition, as well as my obligation as it regards the protested notes.

This note to be secured by mortgage, on an interest in the National Hotel, $10,000.

An undivided half of square 356, including Bradley's wharves, steam saw and grist mill, and large brick warehouse, $12,500.

34 building lots in square 387, worth $300 each, $10,200.

Proposition No. 3 is the only one I am now able to carry into effect. All the propositions are equally secure and advantageous to Mr. Chouteau, and I desire he will allow me the choice.

William A. Bradley to Pierre Chouteau.

NEW YORK, 14*th Nov.*, 1837.

PIERRE CHOUTEAU, ESQ., *St. Louis:*

DEAR SIR: Desirous to make you entirely secure as to the payment of the balance due to you for the Clamorgan tract, and to take up the mortgage given by Captain Thruston, I made to Col. Strother the propositions enclosed. Although he thought they would afford you ample security, he did not feel at liberty to give up the mortgage without your express authority. I now beg leave to submit the propositions to your consideration, and shall be greatly obliged by a reply at your earliest leisure. The words contained in brackets in the enclosed were not in the original. If you feel [a] doubt of the value of the property named in either of the propositions, you can refer to our mutual friend General Gratiot, at Washington, at which place please address your reply. You will remark I have suggested 6 per cent. interest; I have done so, because the rates of interest have been greatly reduced of late. Capt. Thruston's bargain, however, in that particular shall be carried out, if you require it.

William A. Bradley to Pierre Chouteau, Jr.

WASHINGTON, 7*th Dec'r*, 1837.

PIERRE CHOUTEAU, JR., ESQ., *New York:*

DEAR SIR: Understanding from Colonel Strother that you are now in New York, and that you are fully authorised to act in your father's behalf, I beg leave to transmit you, herewith, a copy of my letter to your father of the 14th ulto., and a copy of certain propositions made to Colonel Strother on the 8th ultimo, for the settlement of my indebtedness for the purchase of the Clamorgan grant. All the propositions are equally secure; I would, however, prefer your acceptance of the 3d or 4th, as the payment in the bonds of the American Life and Trust Co. will occasion me a considerable amount of loss, without giving you better security than those preferred by me. The payment in the stocks will also occasion a con-

siderable loss, as they will sell the moment the charters are renewed for a premium of 10 per cent.; of their renewal I have no doubt. If you accept these stocks, I have to ask the privilege of transferring them on the 5th of January, paying the interest on the $24,699 to that date. The kindness and confidence exhibited by your father in giving a fee simple deed for this property, without (in point of fact) taking any security therefor, has made me nervously anxious to settle with him, in order to shew that his confidence has not been misplaced. Although I have expressed frankly my desires as to the acceptance of the 3d and 4th propositions, I leave you at full liberty to accept either of the others; as, cost what it may, the debt shall be satisfactorily settled. To place myself in a situation to make either of the propositions, I have been compelled to make heavy sacrifices.

Pierre Chouteau, Jr., to W. A. Bradley.

NEW YORK, 15*th Dec'r*, 1837.

W. A. BRADLEY, ESQ., *Washington city:*

DEAR SIR: Your esteemed favor of the 7th inst. was duly received, and I have thus long delayed replying, in order, if possible, so to meet your wishes in extinguishing the mortgage on the Clamorgan grant. My father, relying on the punctual payment of the entire consideration money, undertook some expensive operations, based upon that belief, and obtained, in anticipation, a large proportion of the amount he expected to receive in October last; these loans, predicated upon said payments, are long since due, and must be paid soon, for he has no right to calculate on longer indulgence, and the avails of the sale to you are the only means he has to meet these liabilities. I have bestowed upon your various propositions, in detail, full consideration, and would cheerfully accede to that most agreeable to yourself, could my father extract from it the means of meeting his pressing engagements. But situated as he is, I do not see how he can be relieved promptly from his embarrassments, either by the 3d or 4th proposal, or even the 1st, unless you can, at an early day, convert into money the stocks of the District bonds you name, which I trust you will be able to accomplish on favorable terms. If I am to raise the money from what you place in my hands, I decidedly prefer the bonds of the American Life and Trust Company, at their fair market value; but it will be much more agreeable, to both my father and myself, if you will make your own arrangements, and pay the amount of the mortgage, which shall thereupon be given up when you and Captain Thruston shall have obligated yourself to pay within two years (as you propose) the notes already given on account of the purchase; if they are not collected by that time, legal proceedings being instituted by me without delay against such of the parties as do not forthwith secure the payment to my satisfaction. I beg you to be-

lieve the high sense we entertain of your honorable deportment throughout this affair, and that you will not doubt that, but for the circumstances in which my father is placed, I would have had much more pleasure in accepting the terms most convenient to yourself, than to solicit an early payment of the mortgage. To give immediate effect to your arrangements I will, if necessary, wait upon you at Washington; and hoping to hear from you soon, I remain, dear sir, with great respect,

Your obedient servant,

PR. CHOUTEAU, JR.

Thereupon the said Pierre Chouteau, jr., by his solicitor aforesaid, filed in court here the following answer and exhibit to the amended bill, to wit:

Answer of Choteau, Jr., to sup. bill.

Separate answer of Pierre Chouteau, junior, to the amended and supplemental bill of complaint of William A. Bradley, against him and al., filed in the circuit court of the District of Columbia, for the county of Washington, sitting as a court of chancery.

This respondent, saving and reserving to himself, now and at all times, all manner of exception to said bill of complaint for its manifold errors and imperfections, as well in matter of form as of substance, nevertheless now answering the same, in so far as advised that an answer from him is material, for answer says, that he reaffirms and re-asserts each and every statement in his answers to complainant's original bill of complaint, in the like terms in which said statements respectively are set forth in said answers, with this only qualification or explanation, that having, according to the state of his knowledge and belief at the times of making said answers, admitted that the notes of Kinney and Turner therein mentioned, and also referred to in complainant's bill of complaint, were duly protested at maturity; he now thinks it proper to state, and does aver, that Daniel Webster, the endorser of said notes, denies that he had due and timely notice of the non-payment of said notes at maturity by the makers; and on this ground contests and denies his liability as endorser for any part of the amounts of said notes. And respondent is advised by his counsel, and believes that said counsel long since apprised said complainant of said defence of said endorser, that he might, if in his power, rebut it; and complainant has entirely failed since then to notify respondent of any proof to rebut said defence; and respondent has understood and believes, admits himself to be without any such proof.

Respondent admits the sale, charged by complainant as having been made by George F. Strother, as agent for Pierre Chouteau, sr., and Marie P. Leduc, and avers that it is the same mentioned by respondent in his answers to complainant's original bill; he also admits the execution of the deed to Glenn and Wharton charged,

and of the mortgage to secure the purchase-money, or a part thereof, and refers to his former answers for further particulars, and avers that they include all his knowledge on the subject. Said mortgage was surrendered to complainant, as before stated, by respondent, and respondent knows nothing of it since, nor does he know whether said mortgage was ever recorded.

Respondent admits that Charles M. Thruston, sometimes styled Captain Thruston in the papers, was a co-purchaser with complainant, but does not know whether he was the agent that delivered the notes of Kinney, Turner, and others, to Pierre Chouteau, senior.

Respondent admits a correspondence between him and complainant, by letters of December 7, 15, and 18, 1837; he believes, and therefore admits, that complainant has correctly exhibited the letters of December 15 and 18, but that there are material errors in the statement of the letter of December 7, or at least of the papers accompanying the same; said letter and papers are on file at this respondent's residence in St. Louis, Missouri, and he cannot, therefore, have immediate access thereto. He, however, exhibits herewith, marked defendant's exhibit P. C. 1, and prays to make part of this answer, a copy of said letter and papers heretofore made from the originals by his direction, and for the use of his counsel, and which he believes and therefore charges to be, in all respects, a true copy. And he believes, and therefore charges, that complainant's statement of said letter and accompanying papers, in so far as the same varies from said defendant's exhibit, is incorrect. He has no reason to doubt, and therefore admits, that complainant addressed to Pierre Chouteau, senior, and George F. Strother, letters substantially of the purport shown by said exhibit; but in reference to the portion of respondent's letter of December 15, quoted in complainant's present bill, concerning a joint obligation of said Thruston and complainant, respondent thinks it proper to say, and therefore does aver, that said portion of said letter was only designed by this respondent to be responsive to complainant's own proposition to the like effect, shown by the correspondence aforesaid, and to recognise and carry out the existing similar obligation of said Thruston and complainant, and not to introduce a claim for any new or cumulative security not, in substance at least, already stipulated; and respondent has no doubt that this portion of his letter was by complainant so understood at the time of its receipt; and respondent, to render this view more distinct, refers to the last paragraph of complainant's aforesaid letter to George F. Strother. Respondent cannot forbear the expression of his surprise at the allegation of complainant's present bill, that, at the time of filing his original bill, he did not suppose any doubt or controversy existed between him and respondent as to the fact of the equal and like obligation of said Thruston and complainant for the debts of Kinney and Turner, or to that effect; an allegation that respondent submits is at variance with the terms of said original bill.

Respondent admits that he met complainant at Washington, in February, 1838, for the purpose of re-arranging complainant's debts and liabilities for himself and copurchasers; but he utterly denies the allegation of complainant that it was to be according to any proposition that (he assumes) was made by this respondent for the purpose in said correspondence. And respondent denies that, in said correspondence, he made any proposition, unless it be this in substance: that complainant, instead of throwing on Pierre Chouteau, senior, the burthen of negotiating and converting into money the securities offered in the correspondence to cover complainant's indebtedness of $24,699, should make his own arrangements of said securities so as to pay said debt to said Pierre Chouteau, sen'r, in money. Respondent utterly denies the allegations of complainant, in substance, that respondent fully treated with him on the basis of the (assumed) proposition of respondent; and, having definitively agreed with complainant as to the terms of the final arrangement to be made between them, authorised complainant to have these terms embodied in legal form by counsel, and then fully and perfectly comprehended and assented to them; and that complainant did, with the full approbation of respondent, have them put into form, &c., excepting in so far as presently to be stated by respondent.

And respondent avers that his object in meeting and treating with complainant, at Washington as aforesaid, was to get payment of the debt aforesaid, in the re-arrangement thereof for the accommodation of complainant, in the most advantageous manner for the persons entitled that could be effected; and that therein the aforesaid propositions of complainant were the basis of the negotiations only in so far as they showed what complainant could or would probably do in the matter.

Respondent admits that the parties agreed, as to the terms of the final arrangement, so far as this: that complainant was to pay, as money, about $15,000, fifteen thousand dollars, of Life and Trust Company's bonds, and give his notes, at one and two years, for $10,000, (ten thousand dollars,) secured by deed on real estate, that respondent waived any guaranty of the notes of Messrs. Webster, Monroe, and Rogers, of the aggregate amount of nineteen thousand dollars, being part of those referred to in the said correspondence as being under protest; and complainant should include in said deed a security for the ultimate payment of said notes of Kinney and Turner; and respondent understood that, before having the benefit of said security for the notes of Kinney and Turner, he was bound to pursue those parties for two years; and complainant exhibited to respondent, as ample security for the objects of said deed, the real estate described and conveyed in the actual deed from complainant to defendant Gratiot; but respondent did not agree to receive the same as such without farther consideration and examination. And it was also understood that complainant

would unite said Thruston with him in a guaranty of said notes of Kinney and Turner; but this was solely for the accommodation, and at the instance, of complainant, and in the circumstances stated by respondent in his answers to complainant's original bill; and respondent was content to *wave* or take this guaranty of said Thruston after being made safe, to his satisfaction, by the said proposed deed. And it was also understood that complainant should have a draft made of the proper formal papers for completing the arrangement, which papers were then to be submitted for the consideration of respondent and his counsel, that complainant's proposition might be presented in a distinct form, and were to be subject to the right of respondent to exception for any cause. And respondent admits that, under this last understanding, complainant submitted to him the draft of the agreement A, exhibited with complainant's original bill, and the draft of a deed of trust to secure the notes of complainant, and of Kinney and Turner, which drafts respondent has understood and believes were prepared by the counsel of complainant. Respondent, at this date, has a very indistinct idea of the terms of said draft of a deed, and is unable to state, with any precision, the recital or trusts thereof, nor the certain coincidencies or discrepancies between said draft and said draft of agreement and the actual deed of trust executed by complainant. Respondent thinks that the real estate described in the original draft of deed and in the deed executed was the same. The complainant may have meant and intended to make the deed correspond with the agreement, and may have given the same features to both; but respondent does not know, and cannot admit, that such was the case, and respondent denies that this was done, if at all, under any requisition on his part. Respondent was taken by surprise by the charge of complainant in his original bill that the agreement required him to pursue the endorser of Kinney and Turner, and had not previously any idea that such was the case; and he is utterly unable, at this date, to say whether the draft of deed presented by complainant exhibited a similar provision; he can, however, positively say that, had such a provision in the deed attracted his notice, it would have been with him a fatal objection to the draft.

And respondent avers that, throughout his negotiations with complainant at Washington, the latter never did, to the best of respondent's recollection and belief, state or intimate any claim or expectation that, under either the agreement or the deed, respondent would be bound to pursue the endorser of Kinney and Turner, or that such course was desirable; on the contrary, complainant always held out that said Kinney and Turner were of ample means and ability to pay their notes; and, as they notoriously lived in different States, and at a considerable distance from their endorser, simultaneous suits against them and him could not have been prosecuted with any convenience, if at all.

Respondent farther saith, that he examined and considered, so

far as he thought necessary, the papers submitted by complainant as aforesaid—made his own enquiries and examinations as to the value of the property offered by complainant as a security in the draft of a deed—engaged counsel to investigate the title, and consulted him as to such other points in relation to the draft as seemed to call for advice; but the particulars respondent cannot now recall with sufficient distinctness to answer; and respondent being dissatisfied with the draft, he caused his counsel to prepare, under his instructions, the draft of a deed that was actually executed by complainant, and is exhibited with his original bill, and returned to complainant the draft presented by him, and has never since seen it. Respondent undoubtedly explained to the complainant his dissatisfaction with the terms of the original draft of a deed, accounting for having had another prepared, and, as a consequence, called his attention to the changes in the latter, but is unable now to detail any conversation between them on this subject. Respondent's visit to Washington was a hurried and inconvenient one, and he allowed himself but a brief time for treating and arranging with the complainant, from the necessity of proceeding on his journey to his home in St. Louis, in Missouri. His examination of the papers submitted by the complainant was on this account more hasty and cursory than might have otherwise been the case, was chiefly limited to the deed which he considered the material paper; to which cause, and to the form of expression in the agreement, which makes not the slightest reference to an endorser, it may be owing that respondent overlooked the possibility of such a construction being given to the agreement, as is now contended for by complainant; but he avers, that the deed actually executed by complainant to the defendant Gratiot, distinctly embodies the understanding by respondent of his arrangement with complainant, and as such, respondent had it prepared and submitted it to complainant for execution. Respondent admits, that as the alleged difference beween the deed and agreement had not been noticed by him, it was never made the subject of communication by him to complainant, prior to the demand on said Gratiot to execute the trusts of the deed.

When respondent called on Captain Thruston, at Cumberland, to execute the agreement, the latter had been prepared for the call, and read the paper and executed it in the presence of a witness, and returned it to respondent; and respondent has no recollection that any explanation passed between them as to the object of the paper. Respondent admits, that since the institution of complainant's suit, he has paid his second note for $5,000 to respondent, mentioned in the deed of trust aforesaid.

Without this, &c., &c., respondent prays to be hence dismissed, &c.

PR. CHOUTEAU, Jr.
C. COX, *Solicitor.*

STATE, COUNTY, AND CITY OF NEW YORK, *sct:*

On this sixth day of April, 1843, before the subscriber, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, personally appears Pierre Chouteau, junior, the aforegoing respondent, and whose name is subscribed to the aforegoing answer, and makes oath on the holy evangely of Almighty God, that the statements therein contained, so far as made of his own knowledge, are true, and he believes the others to be so.

GEO. W. MORTON, *U. S. Comm'r.*

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, James W. Metcalf, clerk of the circuit court of the United States of America, for the southern district of New York, second circuit, do hereby certify, that I am well acquainted with the handwriting of George W. Morton, whose name is subscribed to the annexed to answer of P. Chouteau, and that the signature to the same is in his proper handwriting. And I do further certify, that he was, at the time of signing the same, a commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, and authorized by acts of Congress, and the rules of court, to administer oaths, &c.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this sixth day of April, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of these United States the sixty-seventh.

J. W. METCALF.

Exhibit P. C. 1, referred to in the aforegoing answer of Pierre Chouteau, jr.

WASHINGTON, 7th *Dec'r*, 1837.

P. CHOUTEAU, jr., esq.

DEAR SIR: understanding from Col. Strother that you are now in New York, and that you are fully authorized to act in your venerable father's behalf, I beg leave to transmit to you, herewith, a copy of my letter to your father of the 14th ult., and a copy of certain propositions made by me to Col. Strother on the 8th ult., for the settlement of my indebtedness for the purchase of the Clarmorgan grant. All the propositions are equally secure; I would prefer however your acceptance of the 3d or 4th, as the payment in the bonds of the American Life and Trust co. will occasion me a considerable amount of loss without affording better security than those preferred by me; the payment in the stocks will also occasion considerable loss, as they will sell on the instant the charters are renewed for a premium of 10 per cent. Of their renewal, I entertain no doubt. If you accept these stocks, I have to ask the privilege of transferring them on the 5 January, paying the inter-

est on the $24,699 to that day. The kindness and confidence exhibited by your father, in giving me a fee simple deed for the property without (in point of fact) taking any security therefor, has made me nervously anxious to settle with him, in order to shew that his confidence has not been misplaced; although I have expressed frankly my desires as to the acceptance of the 3d or 4th propositions, I leave you at full liberty to accept either of the others, as, cost what it may, the debt shall be satisfactorily settled. To place myself in a situation to make either of the propositions, has been attended with much loss.

With great respect, your ob't serv't,

Signed, W. A. BRADLEY.

P. S. Your son-in-law, Maj. Sanford, is of opinion that the 3d proposition will be preferred by you; it will suit me best.

NEW YORK, 14th *Nov'r*, 1837.

P. CHOUTEAU, sen., *St. Louis.*

DEAR SIR: Desirous to make you entirely secure as to the payment of the balance due you for the Clamorgan tract, and to take up the mortgage given by Capt. Thruston, I made to Col. Strother the propositions enclosed; although he thought they would afford you ample security, he did not feel at liberty to give up the mortgage without your express authority; I now beg leave to submit the propositions to your consideration, and shall be greatly obliged by a reply at your earliest leisure; the words contained in brackets in the enclosed were not in the original. If you feel doubt of the value of the property named in either of the propositions, you can refer to our mutual friend Gen'l Gratiot, at Washington, at which place please address your reply. You will remark I have suggested 6 per cent. interest; I have done so because the rates of interest have been greatly reduced of late. Capt. Thruston's bargain, however, in that particular shall be carried out, if you require it.

Very respectfully, your ob't serv't,

W. A. BRADLEY.

WASHINGTON, 8*th Nov'r*, 1837.

To Col. STROTHER:

DEAR SIR: Your departure from New York before my arrival (there) proved to be a fruitful source of loss and disappointment to me. I lost by it not less than $20,000, perhaps more; this you did not, could not anticipate, and I only mention it as a subject of regret and not blame. You know I am very desirous to settle with Mr. Chouteau and make him entirely safe, and to place him in a better situation than he would be under the mortgage, as, if the title should fail, he would possess but slender security for his money. Now to make him perfectly safe I propose, first, to pay the balance of $24,699 in stocks of the Banks of the Metropolis and Patriotic

Bank at par. They are worth, in ordinary times, a premium of from 8 to 10 per cent. (The Patriotic Bank divides 7 per cent. and the Bank of Metropolis 10 per cent. per annum; and their statements exhibits surplus profits exceeding 15 per cent.;) second, to pay said balance in bonds of the American Life and Trust co., or Morris Canal co., payable in three to 5 years, bearing 5 per cent. interest; (I can procure at much sacrifice, the American bonds at 5 per cent.;) third, to pay said balance in my note to be paid at my pleasure within 5 years (with interest at 6 per cent. payable half yearly;) this note to be secured by mortgages and an interest in the National Hotel, worth - - - - $10,000
On an undivided half of square 356, including Bradley's wharves, steam saw and grist mills, and large brick warehouse, worth - - - - 12,500
34 building lots in square 387, worth $300 each, - 10,000

32,700

(my note of course binds all my estate, and if the above property is not sufficient, I will add as much more as *be* necessary;) fourth, if I come into possession of the stock, (I am now in possession) I propose to give my note as aforesaid, to be secured by $50,000 of the stock of the Gen'l Insurance co. of Maryland, (this stock is intrinsically worth 90 per cent., $45,000.) In addition to the foregoing, I will give the joint obligation of Capt. Thruston and myself, agreeing to pay, within two years, all the notes given on account of the purchase which have been protested, provided they shall not be sooner paid—Mr. C. to take the necessary legal steps for their collection. I now have to ask of you to place the partially executed mortgage in my hands, and I will place in yours a mortgage on the property described in the 3d proposition, as well as my obligation as it regards the protested notes.

W. A. BRADLEY.

Answer of C. Cox to amended bill—Answer of Clement Cox to complainant's amended bill.

Separate answer of Clement Cox to the supplemental bill, or amended bill, of William A. Bradley, against him and others.

This respondent saving and reserving to himself, now and at all times, all manner of exception to said bill of complaint, for its manifold errors and imperfections, as well in form as in substance, nevertheless, now proceeding to answer the same in so far as advised that an answer from him is material, for answer says, that he refers to, repeats and re-affirms, each and every statement contained in his answer to complainant's original, and in answer to the complainant's present several interrogatories, is wholly unable to remember any thing further in relation to the drafts alleged to have been prepared by complainant's counsel, Joseph H. Bradley, of an agreement and deed, than as stated in said former answer; respon-

dent cannot recall any particulars of said draft of deed, and therefore can state nothing of its conformity to, or discrepancy from, the agreement or the deed actually executed to the defendant Gratiot, nor wherein it was unsatisfactory to the defendant Chouteau, further than as already suggested: on this point his memory entirely fails him. He supposes, but has no independent or distinct recollection on the subject, that defendant Chouteau advised with him to some extent about the papers aforesaid, prepared by Joseph H. Bradley. His communications with said Chouteau, at the time, were entirely verbal, as he thinks, and he can find no note of them, nor recollect particulars, farther than that he was called on, first to examine and report the title, and when Mr. Chouteau was satisfied therewith, to draw the deed which was actually executed. Respondent remembers no communication with complainant in relation to any of the papers except what he has stated, nor can he recall any further particulars of what passed at the meeting at the Patriotic Bank, when the deed of trust was executed. When respondent called with Maj. Sandford on complainant in February, 1840, this deed of trust was asserted and claimed in behalf of defendant Chouteau, to be binding on complainant according to its actual terms, and this was probably the earliest time that this respondent heard any remark on its discrepancy from the agreement made in the presence or hearing of complainant, without this, &c.

CLEMENT COX.

C. Cox, *Sol'r.*

Circuit Court of the District of Columbia, for the county of Washington.

On this 8th day of April, 1843, in open court personally appears Clement Cox, the above respondent, and makes oath on the Holy Evangely of Almighty God, that the statements in the aforegoing answer contained, so far as made of his own knowledge are true, and he believes the others to be so.

Test: W. BRENT, *Clk.*

Depositions on part of complainant.

Questions to be propounded to Fletcher Webster, esq., a witness produced on the part of the complainant, in the case of William A. Bradley vs. Pierre Chouteau, jr., Charles Gratiot and C. Cox, in the circuit court of the District of Columbia.

First. Do you know Henry L. Kinney named in the bill filed in this cause; if yea, when did you first become acquainted with him; was there any intimacy subsisting between you; and had you opportunities of knowing his circumstances and credit down to the month of July, in the year 1838?

Second. If you answer the foregoing interrogatory in the affirmative, please to state what his circumstances were during the period from your first acquaintance with him, down to the date last mentioned, both as to his property and credit; can you state any

facts or circumstances shewing his credit during that period, or where his property was situated. If so, please to state fully both as to his property and credit.

Third. Do you know where the said H. L. Kinney was, from or about the first of January 1838, to the first of August of that year; if yea, please to state where?

Fourth. Do you know whether the said H. L. Kinney was, or was not, extensively engaged in business in the State of Illinois during the year 1837, and part of the year 1838; and was or was not his place of business and residence well known in that State, and in St. Louis, Missouri.

Fifth. From your knowledge of his property and credit, and of his place of residence or temporary sojourn, can you state whether it would or would not have been easy for a man engaged in business in St. Louis to have discovered the said Henry L. Kinney, and if he had been arrested, could he not have given sufficient bail for, or have paid a debt of, $5,000?

Sixth. From your knowledge of the property of the said H. L. Kinney, and of the laws of the State of Illinois, would it or not have been practicable for a creditor of his to have secured a debt in that State to the amount of $5,000 at any time after the first of March, and before the 1st of July, 1838, or at any and what time thereafter?

Answer to 1st interrogatory: I knew H. L. Kinney; I became acquainted with him the fall of 1837; we were much together; I lived under his roof; I did not have any intimate knowledge of his property; supposed it to be very great; his credit, as far as I knew, was unquestioned.

Answer to 2nd. int. He always seemed to have abundance of money from the time that I first knew him until the fall of 1838; when I perceived that he was annoyed about his transactions, and often spoke of difficulties quite to my surprise. The only facts within my memory going to shew his credit or his property, are 1st, he had three large contracts on the Illinois and Michigan Canal, and was in the monthly receipt of large sums from that source. 2nd. He obtained a loan from the Bank of the Metropolis for a considerable sum in the summer of 1838; I think between three and four thousand dollars, and another at about the same time from a Mr. Boilvin of several, I cannot say how many, thousand dollars; I carried a large sum about my person for him, on our way to the west from Washington, some time in June, 1838; as far as I knew, he was supposed at that time to be possessed of very ample means.

Answer to 3d. int. H. L. Kinney was in or about Peru, La Salle co., Ill., from Jan'y 1838, till April of that year, when he came to Washington, where he remained till the latter part of June; I believe I came on from the west with him, remained several weeks in Washington with him, and returned to the west with him, and I remember that we landed at St. Louis, Mo., on the 4th of July of that year.

Answer to 4th int. H. L. Kinney was very extensively engaged in business in Illinois in the year 1837, and part of the year 1838. He had large contracts on the canal requiring great outlays of money; a large commercial establishment at Peru, and, as I was told, several branches of it in various places in the northern part of the State; he was also a very extensive speculator in lands, and laid out large sums of money for eastern gentlemen in purchasing lands. His residence was well known, perhaps no man in the State was more generally known through the north west at that time than Mr. Kinney; his place of residence was known to many people in St. Louis, merchants and others, with whom he, as I was informed, had business transactions.

In answer to int. 5th. Mr. Kinney's residence was too generally known to render necessary much enquiry about it. I have no doubt that if he had been arrested, he would at once have paid, or given bail for a much larger sum than five hundred dollars.

In answer to int. 6th. From what I knew and believed of the property of H. L. Kinney, it would have been practicable, I think, to have secured a debt of $5,000, between the first of March and the first of July, 1838.

FLETCHER WEBSTER.

DISTRICT OF COLUMBIA, *Washington county, ss.*

On this fourth day of November, in the year eighteen hundred and forty two, before me the subscriber, one of the justices of the peace for the county aforesaid, personally appeared Fletcher Webster, and makes oath on the Holy Evangely of Almighty God, that the answers given to the several interrogatories stated above are true to the best of his knowledge and belief.

Sworn before— NICHOLAS CALLAN, Jr., *J. P.* [SEAL.]

Circuit Court of the District of Columbia, for the county of Washington.

P. CHOUTEAU, et al.
ats
W. A. BRADLEY. } In Chancery.

Cross interrogatories for F. Webster, esq., a witness, examined in chief for the complainant.

1. At what time in the year 1838 did Henry L. Kinney finally leave Illinois; was it as a solvent or insolvent man; publicly or secretly; for what place, and where has he since resided?

2. You state that Kinney returned to Illinois from the east, in July, 1838, did he remain at home from that time until his final departure from the State, or was he not chiefly absent in Wisconsin, or elsewhere?

3. Were you as counsel or otherwise familiar with Kinney's pecuniary affairs, and especially with his business in the courts of his

county as party to suits; if so, was he not much sued on undesputed claims, and has he not left many such suits unsatisfied?

4. In what circumstances could Kinney have been held to bail on a suit against him, in his county or State, in the year 1838, on his note for $5,000 or upwards; would it not have required an affidavit from the creditor, that otherwise the judgment that might be recovered would be lost; could any attachment have been sued out against Kinney before his final departure from the State on the above debt; and if aye, in what circumstances, and on what proof?

5. Had Kinney been sued in his county at any time after his return thither in July, 1838, on a plain claim only contested for delay, at what time, considering the crowded state of the dockets, could a trial or judgment have been forced?

6. Was not Kinney, when in Washington in the spring of 1838, aware that a note of his for $5,000, endorsed by Dan'l Webster, and then over due, and held by the defendant P. Chouteau, of St. Louis, Missouri, had been sent from the west to an agent in New York for collection, and that said agent was in pursuit of him, or was seeking communication with him to press payment; if aye, did said Kinney make any arrangement to pay, or put himself in any communication with said agent on the subject; was he not previously in the habit of including New York in his annual visits from the west, and did he not on this occasion avoid that city? State fully your knowledge and information from Kinney on this subject.

7. One object of the complainant Bradley, in the present suit is, to discharge himself from a guaranty of the note mentioned in the preceding cross interrogatory, to the defendant Chouteau, on the ground of laches on the part of said Chouteau in pursuing Kinney on said note, in and after the year 1838; if you know any thing farther, material for the defence of the defendants in this suit, state it fully and at large.

CLEMENT COX,
Sol'r for the def'ts.

Answer to interrogatory the first. As nearly as I remember, H. L. Kinney left Illinois in October, 1838, the early part of the month; I did not know whether he was solvent or not. He pretended to have large estates in the south, which he was going to look after. He left Illinois as publickly as usual, but travelled directly to Missouri, and left St. Louis secretly. He has since resided partly in Mexico and partly in Texas, I believe. He was also some time in Florida, and for a short period in New Orleans, as I believe.

Answer to interrogatory 2d. After H. L. Kinney's return to Illinois in 1838, he was much absent from his residence at Peru. He was some time at the town of Lockport, in Illinois, and went as he said on business to the northern part of Illinois and to Wisconsin, where, or about where, he remained for several weeks. I cannot

say whether he was absent the greater part of the time that elapsed between his return to Illinois in 1838, and his final departure, but he was certainly absent a large portion of it.

Answer to interrogatory 3d. I was employed as counsel by Mr. Kinney in various suits. Few of them, as I remember, were ever brought to trial. He declared himself always to have good defences to them, though I was not informed by him what his grounds were, and never, as far as I remember, conducted a defence to any of them. The suits were generally for small amounts, and he seemed to care very little for them. Many of them I believe were at his departure, and I presume are still, unsatisfied.

Answer to interrogatory 4th. H. L. Kinney could have been held to bail on affidavit that, unless so held, the benefit of any judgment that might have been recovered against him would be lost, or his property might have been attached on affidavit of the party's belief that he meant to remove from the State, and take his effects with him. Such as I remember was at that time the law of Illinois.

Answer to interrogatory 5th. It would have been a long time before a judgment could have been obtained against H. L. Kinney in the La Salle county court at that time; several months, perhaps a year or more.

Answer to interrogatory 6th. I do not now remember distinctly, if indeed I ever knew, that Kinney was aware that a note of $5,000, endorsed by D. Webster, was held against him in New York. The question, however, reminds me of what I had previously not recollected, that Kinney had some reason for not going to New York; on some pecuniary grounds some individual from New York did, I think, come on to Washington to see H. L. Kinney, in regard to a debt owed by him to some one at that place. I forget, if I ever knew, what particular liability he came to Washington to hold Mr. Kinney to. I was never informed by H. L. Kinney that any such agent as the interrogatory No. 6 describes was seeking him, nor did I know it from any other source, as I now remember. I recollect that he did avoid visiting New York, where I believe he usually went when he came east, on account of some pecuniary liabilities there, as well as I now remember. My recollection of all these things is somewhat indistinct; H. L. Kinney was always reserved, seldom spoke out clearly, and told his business to any one. He was particularly careful to inform no one of his difficulties, if he had any, as well those connected with him by blood as those who had business with him. I received very little information from him directly about his affairs; all I knew of his difficulties I gathered piecemeal from occasional conversation.

Answer to interrogatory 7th. I know nothing further material to the defence of the defendant that I am aware. I did not know, until after H. L. Kinney had left Illinois and the western country, that Mr. Chouteau had any demand against him. I was informed of this by Mr. Chouteau himself some time afterward.

FLETCHER WEBSTER.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

On this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and forty-two, personally appeared the above named Fletcher Webster, and made solemn oath that the foregoing answers by him subscribed contain the truth, the whole truth, and nothing but the truth.

Before me, JOHN P. HEALY, *Jus. Peace.*

Deposition of J. H. Bradley.

Deposition of Joseph H. Bradley, esq.

I am called upon to state my recollection of the two papers prepared by me as counsel for William A. Bradley on the 23d February, 1838, the one being an agreement between the said William A. Bradley and Charles M. Thruston of the one part, and Pierre Chouteau, jr., of the other part; and the other a deed of trust from said Bradley to Charles Gratiot. I cannot at this late day recollect all the facts, but there are various reasons which have impressed the material parts of them on my mind. I state, then, that I very well recollect having been called upon by said William A. Bradley to prepare those two papers; that I received from him written instructions, and that I prepared the papers pursuant to those instructions. I have in vain searched among my papers for the paper containing those instructions, but cannot find it, or any trace of it. I remember, also, that I was very particular in my drafts of the agreement and the deed of trust, that I was informed they were to be executed on the day I prepared them, and that I filled up the dates, which I do not usually do.

I am positive in my recollection, also, that the agreement and the deed of trust, so far as they related to the notes of Kinney and Turner, were to be upon the same terms, and require the same obligation of Mr. Choteau as to diligence, because I am quite sure in regard to those notes there was but one instruction, both as to the deed of trust and the agreement. But I repeat, I cannot now state positively what those terms were. After these drafts had been prepared, I gave them to the said William A. Bradley, and a day or two afterwards while I was engaged in the trial of a cause in court, or on my way to the Supreme Court, Mr. Clement Cox told me he had been employed by Mr. Choteau to examine the title to the property conveyed in the deed of trust, and *from* that I erroneously described a portion of it, and as I understood he did this in a spirit of courtesy to prevent any misunderstanding on my part, as he added a new deed would have to be prepared. I am firm and confident in my recollection of the fact, that nothing was said about any modification or change of the trusts in the deed. Mr. W. A. Bradley also stated the same fact to me, and requested that I would examine the new deed after it should be prepared by Mr. Cox, and I

told him it was altogether unnecessary, as he might rely with full confidence on Mr. Cox. I do not recollect that I ever heard a word said on the subject again until Mr. Cox notified Mr. Bradley that he was about to sell under the deed of trust, and I then, for the first time, on examining the recorded deed, discovered the discrepancy between the deed and the agreement, which I pointed out to the complainant after my opinion had been given upon the statement made by Mr. Cox in February, 1840, which is filed in the cause. I do not know that I ever saw Mr. Choteau, and I am quite sure I never conversed with him. As to other matters, my memory is imperfect; but to the best of my recollection and belief, the deed of trust prepared by me recited substantially, if not in the same words as the agreement, the duty undertaken by Mr. Choteau in regard to the notes of Turner and Kinney, and that these notes had been assigned to him by the said William A. Bradley and Charles M. Thruston. I am strengthened in this recollection by the fact that, when my opinion was asked in 1840, as to the liability of Mr. Bradley, I referred to the terms of the original agreement from memory, and did not see a copy of it until after I had seen the recorded deed of trust, and then discovered terms so different from those impressed on my mind. Upon seeing which, I requested a copy of the agreement.

JOS. H. BRADLEY.

Cross interrogatories on the part defendant Choteau to Joseph H. Bradley, esq., a witness produced on the part of complainant.

1. Were you not the counsel or legal adviser of the complainant, and Clement Cox, esq., of the said defendant, in the preparation and draught of a deed of trust mentioned in your foregoing statement?

2. According to the best of your recollection, was not the corrected draught of that instrument, as prepared by Mr. Cox, laid before you by him, or by the complainant, (and which of them,) before its execution?

3. Did you then observe, or do you now certainly recollect, any difference between your original draught and the corrected draught by Mr. Cox, in that part of the instrument which prescribes the steps of diligence therein required of said defendant in pursuing the recovery of the said notes of Turner and Kinney, or is your present impression (if such impression you have) of any difference between the two draughts in that respect, founded on what you now see of the difference between the instrument in its present form and the agreement of the complainant and C. M. Thruston, dated 23d Feb., 1838? (Complainant's Exh. A.)

4. Were those two instruments both executed at the same time, or on the same day?

5. Was not the last mentioned of said instruments (Exh. A) in part executed by complainant here at Washington, and afterwards by C. M. Thruston at Cumberland, in Maryland?

6. Was not the said deed of trust delivered unconditionally on its execution, or was its delivery or effect in any wise suspended till the complete execution of the said agreement by C. M. Thruston?

7. Did the written instructions, which you speake of having received from the complainant for the preparation of the two instruments, specify that recourse was to be had by said defendant against the endorsers of said notes, before proceeding to enforce the deed of trust, or within the two years therein allowed for the experiment [of] a recovery against the makers?

8. Have you any certain and distinct recollection of the tenor or import of such instructions, other than what you collect from inspection of the two instruments as they now exist?

Answers to the cross interrogatories.

To the first. My answer to this will be found in my original statement. The terms had all been agreed upon between the parties, and I received written instructions to prepare draughts of the agreement, and deed of trust to carry those terms into effect. This is all the professional agency I had in the business. I know no more of the employment of Mr. Cox than I have already stated.

To the second. My impression for a long time was, that the draught prepared by Mr. Cox had been submitted to me by the complainant before it was executed. I am now satisfied, by reference to dates and circumstances, and by Mr. Cox's more distinct recollection, that I did not see this draught before it was executed, and never until the controversy arose in 1840.

To the third. I have already said that, to the best of my recollection, I did not see the deed prepared by Mr. Cox till 1840; my present impression of the difference between the draught prepared by me and the deed drawn by Mr. Cox, in the points referred to, is so strong that I feel confident of such difference. It does not arise from the difference I now see betwen the agreement and the deed of trust, but from an independent and distinct memory of what my draught of the deed was intended to be. I cannot now say that my draught did, in terms, express the intention, and therefore I cannot say how the two drafts agreed or differed; but I rely upon my care and general accuracy in preparing papers, and upon the fact that, in this case, I took unusual care. My memory is so distinct on this subject, that, as soon as I saw this deed, I discovered the difference between what was intended and what had been executed; but I repeat, it is impossible for me to state the fact that there is any difference between the two drafts, for I cannot now say that I ever saw the draft prepared by me after I gave it to the complainant in February, 1838, and before Mr. Cox prepared his draught.

To the 4th. I know nothing of the execution of the papers, but from what the complainant told me.

To the 5th, the same; to the 6th, the same.

To the 7th. I have in vain looked for those original instructions. I cannot find them, and I have looked every where among my papers for them. I can only repeat my memory is very clear that, by their terms, Mr. Chouteau was to resort to all the parties to the notes, by which I understood endorsers as well as makers; indeed, my recollection is, that those terms were copied as nearly verbatim as possible, into both the agreement and the draught of the deed prepared by me.

To the 8th. I have not any certain or distinct recollection of the precise language used, but of the tenor and import of these instructions I can speak very confidently, and independent altogether of the present papers. I would rely very confidently on that recollection.

Deposition of D. A. Hall.

1st. To the first interrogatory deponent answering saith: I did know Henry L. Kinney, of the State of Illinois, and became first acquainted with him in the month of October, 1836, at his own residence in La Salle county, Illinois. I afterwards saw him in the spring of 1837, and again in the summer of 1838, in Washington.

2nd. To the second interrogatory he saith: I know that, in 1836, the said Kinney had the reputation in his own county of being a large landed proprietor; he had a very large and very valuable farm lying near the town of Peru, in La Salle county, a part of which, in the autumn of that year, I traversed with him, and he pointed out to me other extensive and very desirable possessions which he represented to be his. He had also a store and a very ample stock of goods at Peru, where he appeared to be doing a prosperous business. I purchased from him, at that time, property to the amount of $1,500, for which I paid him $1,000 in cash, and $500 in six months after. Subsequently I purchased from him property, viz: lots of land in Peru, to the amount of $1,700, for which I paid him in cash; the last payment, to the amount of $1,000, being made in Washington, on the 15th day of June, 1838.

3d. To the third, he saith: I know that the said H. L. Kinney was in Washington in the summer of the year 1838, and passed, I should think, from two to three months here. My impression is that he came early in April; the books of Brown's hotel will probably show, as he took lodgings there, and that he did not leave till the latter part of June. I have a deed from him, executed before the late William Hewitt on the 15th of June, and I am certain he did not leave for several days, and I should think not till two weeks after that. It was then that I made my last purchase from him as I have stated.

4th. To the fourth, he saith: I believe that if the said Kinney had been sued for a debt of five thousand dollars, at the time of his visit to this city in the summer of 1838, he could have paid or given security for it, or for his appearance at court to answer the writ.

5th. To the fifth, he saith: I know that he did, at that time, borrow money to the amount of ten thousand dollars (that I believe was the sum) from one Nicholas Boilvan, who was here, and had just received it on account of money due him under an Indian treaty which was then ratified by the Senate. I know also that he paid money, viz: $5,000 due by him on a note of his held by the Patriotic Bank, about the same time.

D. A. HALL.

Sworn to, this 28th March, 1843, by D. A. Hall.
Test, W. BRENT, *Clk.*

Mortgage referred to, page 32.

THRUSTON and GLENN, to CHOTEAU and LEDUC. } Mortgage.

Know all men by these presents, that we, John Glenn and Charles M. Thruston, of the State of Maryland, in consideration of the sum of fifty-three thousand six hundred and ninety-nine dollars, to us in hand paid by Pierre Choteau and Marie P. Leduc, of the county of St. Louis, and State of Missouri, the receipt whereof we hereby acknowledge, do hereby give, grant, bargain, sell, and convey, unto the said Pierre Choteau and Marie P. Leduc, a certain piece or parcel of land, situate, lying, and being in the county of Madrid, State of Missouri, and extending into Arkansas, containing four hundred and twenty-nine thousand five hundred and ninety-two arpens, French measured, it being an undivided four-fifth parts of a tract of land this day conveyed to us by Pierre Choteau and Marie P. Leduc; which said tract lies on the western side of the river Mississippi, fronting on said river from a point about one hundred arpens below the Little Prairie, (which is distant about thirty miles from New Madrid,) to a point on said river, descending the current thereof on the said western side; which point is right opposite the mouth of a river called a Carbono, and which tract contains about five hundred and thirty-six thousand nine hundred and eighty-nine arpens, French measured, be the same more or less, as appears by the survey thereof made by the proper officers in the month of January, 1806, and certified as received for record by the surveyor general of the district of Louisiana, on the 28th day of February, 1806, and was granted by the Spanish Government in Upper Louisiana, represented by Don Carlos Dehault Delassus, the then commandant of New Madrid and its dependencies, to Jaques Clamorgan and his representatives: To have and to hold the said undivided four-fifth parts of the said tract or parcel of land, together with all the privileges and appurtenances thereunto belonging, to the said Pierre Choteau and Marie P. Leduc, their heirs, and assigns, free from the claim or claims of all and every person or persons whatsoever, claiming by, through, or under us. Provided, nevertheless, that if

the said John Glenn and Charles M. Thruston, their successors or assigns, shall pay, or cause to be paid, unto the said Pierre Choteau and Marie P. Leduc, their heirs or assigns, on or before the first day of June, one thousand eight hundred [and] thirty-nine, the said sum of fifty-three thousand six hundred and ninety-nine dollars, with eight per centum per annum on all such part of the said sum of fifty-three thousand six hundred and ninety-nine dollars as may remain unpaid on the eighth day of November next, said interest to be paid simi-annually, then this deed shall be null and void, otherwise shall remain absolute.

In witness whereof, we affix our hands and seals hereunto, on the day and year first above written.

—— ——, [SEAL.]
CHS. M. THRUSTON, *Trustee.* [SEAL.]

Witness: GEORGE F. STROTHER.

STATE OF MISSOURI,
County of Saint Louis, ss:

Be it remembered that, on this first day of June, in the year of our Lord one thousand eight hundred and thirty-seven, before me, Henry Chouteau, clerk of the county court for the county aforesaid, personally appears Charles M. Thruston, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned; and I further certify that said court is a court of record.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at office in the city of St. Louis, [SEAL.] county and State aforesaid, the day and year above written.

HENRY CHOUTEAU, *Clerk.*

P. Choteau, Jr., receipt for $53,679, *from W. A. Bradley.*

CITY OF WASHINGTON, 26 *Feb'y*, 1838.

I, Pierre Chouteau, jr., of the city of St. Louis, being duly authorised, do hereby acknowledge to have received payment of John Glenn and Charles M. Thruston, trustees, per hands of Wm. A. Bradley, of the amount of the within mortgage, viz: fifty-three thousand six hundred [and] seventy-nine dollars in money, and in other securities, and do hereby certify that the land contained in the within described grant is released from all claims upon it growing out of the within deed of mortgage.

PR. CHOUTEAU, JR.

Witness: C. GRATIOT.

P. Choteau, Sen'r, receipt.—Receipt of P. Choteau.

Whereas Pierre Choteau and Marie P. Leduc, of the State of Missouri, have, this first day of June, 1837, executed a deed for a certain tract of land containing 536,989 arpens, and lying on the west-

ern side of the river Mississippi, unto John Glenn and Charles M. Thruston, of the State of Maryland, the consideration for which land is the sum of 53,699 dollars: And whereas the said Glenn and Thruston have this day executed a mortgage to said Choteau and Leduc to secure the payment of the said sum, now we do hereby acknowledge to have received this day from the said Glenn and Thruston the following described promissory notes, viz: of Daniel Webster for ten thousand dollars, drawn in favor of Henry L. Kinney and by him endorsed, dated 24th March, 1837, payable 1st October next; of Lloyd Rogers, for eight thousand dollars, drawn in favor of Virgil Maxcy and by him endorsed, dated 31 March, 1837, and payable six months from date; of Henry L. Kinney for ($5,000) five thousand dollars, drawn in favor of Daniel Webster and by him endorsed, dated 24 March, 1837, and payable on the first day of October next; of Levi C. Turner for five thousand dollars, drawn in favor of Daniel Webster and by him endorsed, dated 24 March, 1837, payable 1st of October next; of James Monroe for one thousand dollars, drawn in favor of C. M. Thruston and by him endorsed, dated 21 March, 1837, and payable four months from date; the proceeds of which notes, when received, to be credited to the said John Glenn and Charles M. Thruston, in part payment of the said sum of fifty-three thousand six hundred and ninety-nine dollars, and in part discharge of the said mortgage.

Dated St. Louis, June 1st, 1837.

M. P. LEDUC,
PR. CHOUTEAU, Sr.

Witness: GEORGE F. STROTHER.

Letter from C. Gratiot to C. M. Thruston.

Letter of C. Gratiot to C. M. Thruston.

WASHINGTON, *Feb'y* 26, 1838.

CAPT. C. M. THRUSTON:

MY DEAR SIR: Mr. Bradley and Mr. Chouteau have come to a final arrangement in reference to the mortgage for the purchase of the Clamorgan tract in Mo. The first secures the debt, partly on city property, and in his and your joint bond for $10,000, as collateral security for the promissory notes of $5,000 each of Turner and Kinney.

Mr. Chouteau will be in Cumberland on Thursday or Friday next; and, at the suggestion of Mr. Bradley, request you to meet him at the stage office at the arrival of the stage, to append your signature to the bond which Mr. C. will hand you.

Very respectfully, your obedient servant,

C. GRATIOT.

Letter from W. A. Bradley to R. Crooks.—Letter from W. A. Bradley to Ramsay Crooks.

WASHINGTON, 12*th Feb'y*, 1839.

RAMSAY CROOKS, esq., *New York.*

DEAR SIR: Have you, in your possession, a paper executed by Col. Thruston and myself regarding the notes of Kinney and Turner? If so, pray oblige me with a copy. Mr. Chouteau, having neglected to take any steps against Kinney, who has recently left the U. States, has certainly exonerated Thruston and myself from any liability in that behalf. Mr. Webster's endorsement, however, renders it, I presume, entirely safe. Have you recovered the amount of Turner's note? You have Mr. Webster's security there also. My note of $5,000 will soon become due; it will, of course, be paid.

With great respect, yr. ob. serv't,
W. A. BRADLEY.

Letter from R. Crooks to W. A. Bradley.—Letter from Ramsay Crooks to W. A. Bradley.

NEW YORK, 14 *Feb'y*, 1839.

W. A. BRADLEY, esq'r, *Washington.*

DEAR SIR: I have your esteemed letter of 12 instant, and duly note the contents. The paper executed by yourself and Col. Thruston is not in my possession, nor do I remember having ever seen it. The suit against Mr. Turner is waiting its turn in our supreme court, and our attorney cannot tell me when it will be reached.

I am, dear sir, very respectfully, your ob. servant,
RAM'Y CROOKS.

Pro. note from W. A. Bradley to P. Choteau, jr., for $5,000.

Notes of W. A. Bradley.

Drs. 5,000. WASHINGTON, 26 *Feb'y*, 1838.

Two years after date, I promise to pay to the order of Pierre Chouteau, jr., five thousand dollars, for value received, with interest from date, payable at the Patriotic Bank.

W. A. BRADLEY.

Endorsed.—PR. CHOUTEAU, JR.,
J. F. A. SANFORD.

Pro. note from W. A. Bradley to P. Choteau, jr., for $5,000.

Dollars 5,000. WASHINGTON, 26 *Feb'y*, 1838.

One year after date, I promise to pay to the order of Pierre Chouteau, jr., five thousand dollars, for value received, with interest from date, payable at the Patriotic Bank.

W. A. BRADLEY.

Endorsed.—Pay to Ramsay Crooks or order.—PR. CHOUTEAU, JR., RAMSAY CROOKS.

Pay to the order of James Adams, esq., cashier.

JAS. ADAMS, *Cr.*

A. M. F. 1199, due 29 July, 1840.

Dollars 5,000. WASHINGTON, 26 *Feb'y*, 1840.

Five months after date, I promise to pay to the order of J. F. A. Sanford, at the Merchants' Bank of New York, five thousand dollars, for value received, with interest.

W. A. BRADLEY.

Endorsed.—J. F. A. SANFORD,
RAM'Y CROOKS, *President Am.* pr. *Co.*
RAM'Y CROOKS.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said separate answers and supplemental answers of the defendants, for replication thereto, says that he will aver and maintain and prove his said bill to be true, full, and sufficient in law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without that, &c.

Whereupon the said cause was set for hearing by consent of parties.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their solicitors aforesaid, and by order of the court here, the said cause was regularly continued at rules until the first Monday of September, eighteen hundred and forty-three.

Whereupon, all and singular the premises being, by the court here, seen and understood, and the said parties, by their solicitors aforesaid, being heard, and after mature deliberation being thereupon had, the said court made the following decree in the premises:

Decree dismissing bill.

BRADLEY vs. CHOUTEAU. } Decree.

This cause coming on to be heard on bill, answers, general replication, and testimony, and, being submitted, it is now by the court, this 4th day of September, 1843, ordered, adjudged, and decreed that the bill of the complainant be and the same is hereby dismissed; and that the complainant do pay to the defendants their proper costs in this behalf sustained, to be taxed by the clerk of the court.

By order of the court.

Test:

W. BRENT, *Cl'k.*

4 *Sept'r*, 1843.

Appeal prayed to Sup. Court U. S.

Thereupon the said Wm. A. Bradley, by his solicitor aforesaid, prayed an appeal from the judgment and decree of the court aforesaid to the Supreme Court of the United States; and to him the same is granted.

Whereupon the said complainant, by his solicitor aforesaid, files in court here a certain writing obligatory, commonly called an appeal bond, in the words following, to wit:

Appeal bond.

Know all men by these presents, that we, William A. Bradley and Thomas Woodward, are held and firmly bound, unto Pierre Chouteau, Charles Gratiot, and Clement Cox, in the full and just sum of two hundred dollars, current money of the United States, to be paid to the said Pierre Chouteau, Charles Gratiot, and Clement Cox, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 15th day of January, in the year eighteen hundred and forty-four.

Whereas, lately, at a circuit court of the District of Columbia, sitting as a court of equity for Washington county, in a cause wherein the said William A. Bradley was complainant, and the said Pierre Chouteau, Charles Gratiot, and Clement Cox were defendants, a decree was rendered against the said complainant, and he having entered an appeal to the Supreme Court of the United States: now the condition of the above obligation is such that, if the said William A. Bradley shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

W. A. BRADLEY, [L. S.]
THOMAS WOODWARD. [L. S.]

Signed, sealed, and delivered in the presence [of]—
JNO. A. SMITH.

Which bond being read and heard, and the securities in the said bond being by the court here approved, it is therefore ordered by the said court that the record and proceedings aforesaid, with all things thereto relating, be transmitted to the said Supreme Court of the United States; and the same are transmitted to the said court accordingly.

[L. S.] In testimony whereof, I, William Brent, clerk of the circuit court of the District of Columbia, for the county of Washington, hereto subscribe my name and affix the seal of said court, this 15th day of January, 1844.

W. BRENT, *Clk.*

Filed 16th Jan'y, 1844.

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SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1844.—No. 104.

WILLIAM A. BRADLEY,

vs.

P. CHOUTEAU, JR., et al.

In order to cure an inadvertent diminution of the record it is agreed in this cause—

1. That due diligence was used by the defendant, Chouteau, in prosecuting his legal remedy against Levi C. Turner, in the note of the latter, set forth in the record, according to the agreement between said defendant and the complainant, and that no portion of said debt was made thereby.

2. That the witness, Ramsay Crooks, has testified as his reason for not forwarding to the West the note of Henry L. Kinney, mentioned in the record, when he found at Washington, in the month of July, 1838, that said Kinney had gone west, that he, the witness, could not ascertain to what section of the West Kinney had directed his steps, nor was the witness by any means certain that Kinney would not return and visit New York, and in this uncertainty the witness retained the note.

And it is further agreed that this memorandum shall be printed, under the direction of the clerk of the Supreme Court, and annexed to and form part of the record in this cause.

JOS. H. BRADLEY,
Sol. for Compl.

CLEMENT COX,
Sol. for def'ts, app'ees.